Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

IN THE MATTER OF THE APPLICATION OF PAUL L. GAULT AND MARJORIE GAULT, FATHER AND MOTHER OF GERALD FRANCIS GAULT, A MINOR, APPELLANTS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

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[fol. A]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

File No. 8476

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a WRIT OF HABEAS CORPUS.

PETITION IN FORM OF AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS—Filed August 3, 1964

State of Arizona,
County of Maricopa, ss.:

Paul L. Gault, being duly sworn, deposes and says, that he is the father of Gerald Francis Gault, a Minor, fifteen (15) years of age, born January 23, 1949; that deponent resides in Globe, Gila County, Arizona, with his address for mail being P. O. Box 1402 in Globe; that he is married to Marjorie Gault, who is the mother of said minor and they reside together with said minor as above. They make this affidavit as part of an application for the issuance of a Writ of Habeas Corpus to the Supreme Court and respectfully show the following:

I

That said minor is presently detained at the Arizona State Industrial School, Wilcox, Arizona, pursuant to a commitment made by the Honorable Robert E. McGhee, Judge of the Superior Court of Gila County on June 15, 1964 under case number 2379 of that Court.

[File endorsement omitted]

II

By said commitment Judge McGhee, acting as Juvenile Judge, found said minor to be a delinquent and ordered said child to be committed to the State Industrial School for the period of his minority, unless sooner discharged by due process of law; that said minor was immediately so committed and continues to be so committed.

[fol. B]

III

Deponent is advised by his attorney and therefore believes that his said son is being detained from his parents unlawfully; that his commitment was illegal; that the finding of the Juvenile Judge of the Superior Court that said minor is delinquent was made on insufficient evidence; that the rights of the said minor and the parents to be advised of their right to counsel were violated; that the parents were not served as required by law (section 8-224 ARS); that no testimony was taken at the hearing; that deponent and his wife were never clear on the point whether their own child was being charged or that he was being held as a witness against another, to wit, Ronny Lewis; and they did not hear the victim testify and therefore there was no opportunity to know if she was accusing deponent's son of anything.

IV

Deponent's said son Gerald was charged with lewd phone calls on or about June 8, 1964. The boy told his parents that a phone call was made in their trailer by a fifteen (15) year old neighbor Ronnie Lewis who used suggestive language to a woman, one Ora Cook of Globe; that there was only one such instance; that Gerald himself overheard but did not take part in the conversation; that he had dialed the number at Ronnie's request.

V

At the time of this charge, said minor was on probation of six months, having been charged on February 2, 1964

with grand theft, the details of which appear in the juvenile referral report in that Court in case 2288 of one Curtis Marion Uptain and state

> Curtis took a wallet containing $60.00 from a purse at the Alden Theater, purse belonged to Mary Hernandez, Curtis in company of Gerald Gault and Lasiter Uptain.

[fol. C] That deponent's said child admitted to him and to the Court on that occasion that he saw Curtis take the wallet from the purse and he followed him out of the theater; that he later assisted the police in recovering the wallet and the money, having known who took the same.

Wherefore, deponent respectfully prays that a Writ of Habeas Corpus issue, directed to said State Industrial School and to the person there having responsibility for the custody of their child Gerald who is being restrained of his liberty and illegally in such custody; that a time be set for a hearing on this matter, or that the same be referred to an appropriate tribunal for a hearing of the facts, and for such other relief as may be just.

Paul L. Gault.

Sworn to before me this 1st day of August, 1964

Amelia D. Lewis, Notary Public.

My commission expires 5/2/66.

Copy received Aug. 3, 1964, Stanley Newell, Ass't Atty. Gen.

[fol. D]

JUVENILE REFERRAL REPORT

Name Gerald Francis Gault Age 15 Birth Date 1-23-49
Address #31 West Side Trailer Park Birth Place Pa.
Date 2-2-64 Charge Vio. Sect 13-663A Grand Theft
Sex M Race W Phone —
School Hill St. School Grade 8
Works —
Father Paul Gault Works New Mexico
Mother Marjorie Gault Works Baby Sitter
Guardian — Works —
Referred by Globe Police Dept.
Arresting Officer Van Buskirk & Burgin
Parents Notified by Van Buskirk Date 2-2-64 Hour 23:20
√ Follow Up Requested ☐ No Follow Up Requested

—DETAILS—

See Referral on Curtis Uptain.
Court Action Case No. 2379
Handled by Probation Officer
Placed in Detention
Released from Detention
X Petition Filed 2-7-64
X Hearing Held 2-25-64
Dismissed
Committed to State Industrial School
Committed to Good Shepherd School
X Placed on Probation 6 Months
1) Stay out of Trouble
2) Obey Mother
3) Group Sessions

[Stamp—Filed at 11:00 A. M.—Feb 26 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

[fol. E]

JUVENILE REFERRAL REPORT

Name Curtis Marion Uptain Age 11 Birth Date 11-28-52
Address 260 Mayss Birth Place Miami
Date 2-2-64 Charge Grand Theft
Sex M Race White Phone None
School Central School Grade 5th
Works
Father Arnold Uptain Works Christmas
Mother Willie Uptain Works Frontier Cafe
Guardian Works
Referred by Globe P.D.
Arresting Officer Van Buskirk & Burgin
Parents Notified by Van Buskirk Date 2-2-64 Hour 23:15
☒ Follow Up Requested ☐ No Follow Up Requested

—DETAILS—

Curtis took a wallet containing $60.00 from a purse at the Alden Theater. Purse belonged to Mary Hernandez. Curtis in company of Gerald Gault & Lasiter Uptain.

Court Action Case No. 2284
Handled by Probation Officer

X Placed in Detention 2-3-64
X Released from Detention 2-4-64
X Petition Filed 2-3-64
X Hearing Held 2-3-64
Dismissed
X Committed to State Industrial School 2-3-64
Committed to Good Shepherd School
Placed on Probation

[Stamp—Filed at 10:00 A. M.—Feb 26 1964—Arnold M. Ambos, By H.W., Deputy]

[fol. F]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 164769

[Title omitted]

PETITION IN FORM OF AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS—Filed August 3, 1964

State of Arizona,
County of Maricopa, ss.:

Marjorie Gault, being duly sworn, deposes and says: that she is the wife of Paul L. Gault and the mother of Gerald Francis Gault, a minor, of the age of fifteen years, who was born to her on January 23rd, 1949, and makes this application for a writ of *habeas corpus*.

Petitioner's said son Gerald is now being detained at the Arizona State Industrial School, having been so committed by commitment made by the Hon. Robert T. McGhee, Juvenile Judge of Gila County, on June 15, 1964, and continues so detained.

Petitioner's said son has been charged on two separate occasions by the Juvenile Judge. The facts surrounding the two happenings, so far as petitioner knows and same are pertinent are set out as follows.

First, as to the later charge, that of "Lewd phone calls," petitioner got home from work on Monday, June 8, 1964, and her son Gerald did not appear on time; he is usually prompt. She sent her older boy to the trailer of the Lewis family in the same court, assuming Gerald was with Ronnie Lewis. There the older boy learned, and so did petitioner, that about ten o'clock that morning the Sheriff's office had taken Gerald in custody. Petitioner then went to the detention home and found that her boy was there. She attended

[File endorsement omitted]

before Judge McGhee at which time Gerald denied having said anything to the woman, other than to have dialed the number and asked her if it was that number and then handing the phone to Ronnie Lewis, who had stated he was to call her to ask her to come to clean the Lewis trailer at his [fol. G] father's request. At that time Judge McGhee stated that Gerald should go back to the detention home for a few days and he would think the matter over.

On Friday afternoon about 3 p.m. Gerald appeared at the home where petitioner was working and advised that Mr. Flagg, probation officer of the court, had driven him down and left him. He did not know anything, other than he had been released.

About five o'clock that same afternoon and in the same place, Mr. Flagg came back and delivered to petitioner a sheet of paper, a copy of which is annexed to these proceedings and marked Exhibit A. This plain piece of white paper states:

> Mrs. Gault:
>
> Judge McGhee has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further hearings on Gerald's delinquency
>
> (signed) Flagg.

Petitioner assumed, in spite of the wording, "Gerald's delinquency," that the fact that he had been released was the adjudication, and that he was required to be in court, as were they, due to the fact that he might have to tell his story as to what Ronnie had done. In spite of this, petitioner continued to have second doubts and on Saturday June 13, 1964, spoke to Chief of Police Rod Weinberger, and said that perhaps the family had better get a lawyer. The Chief of Police stated that would not be necessary as Judge McGhee was giving the boy a year's probation.

On Monday, resting on that statement, petitioners and their son Gerald, attended before Judge McGhee. At that time the only other persons present were Ronnie Lewis

and his father, Mr. Flagg and Mr. Henderson, probation officers. This petitioner asked the Judge why the complainant, or victim, as alleged, Mrs. Ora Cook, was not present, to testify. Judge McGhee informed petitioner that it was not necessary for her to be there. At that hearing Gerald repeated his statement that he did not do any sug-
[fol. H] gestive or any talking to Mrs. Cook, except as above stated. The boy Ronnie Lewis did not state that Gerald had done any of the suggestive talking. Judge McGhee then ruled that Gerald should be sent to Fort Grant. Petitioner asked to kiss him goodbye, which the Judge refused, and told petitioner that she ought to be sent down to Fort Grant. Moreover, the boy had asked for his bible and some other things, and the probation officer Flagg refused permission to let him have the same.

With respect to the hearing itself, no one was sworn as a witness; no statement was made by the Judge as to the seriousness of the matter, nor that it might result in Gerald being sent to Fort Grant, and petitioner did not know that this would be so until the Judge actually said so at the close of the so-called hearing.

As to the previous charge, petitioner's son was missing after having attended a movie and petitioner had gone to search for him when he was brought home about one o'clock by Mr. Flagg, who stated that he was charged concerning the theft of a wallet and that there would have to be a hearing. Mr. Henderson conducted the hearing at which only petitioners and their son were present. Following this petitioner was informed by Mr. Flagg and her son that he had been placed on six months probation. Petitioners did not know that there could have been a hearing before the Juvenile Judge; it is presumed that Mr. Henderson acted as a referee and made a report to the Judge who ordered the probation. There is nothing in the records to indicate anything of this.

Petitioner has consulted with an attorney of the Arizona Civil Liberties Union now and believes that there is not

sufficient to show her child to be delinquent; she has not found him anything than an obedient boy who has gotten into some trouble, not of a serious enough nature for the punishment meted out to him.

Wherefore, petitioner prays a writ of habeas corpus.

Marjorie Gault

Subscribed and sworn to before me this 1st day of August, 1964.

Amelia D. Lewis, Notary Public.

My com. exp. 5/2/66.

[fol. I]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

File No. 8476

[Title omitted]

ORDER FOR HEARING APPLICATION FOR WRIT OF HABEAS CORPUS—August 3, 1964

On reading the affidavit of Paul L. Gault, one of the natural parents of Gerald Francis Gault, a minor, whereby it is alleged that the said Gerald Francis Gault is restrained of his liberty and is illegally committed to the Arizona State Industrial School at Wilcox, Arizona, and kept from his natural parents, the applicants herein; and stating of what the alleged illegality consists it is

Ordered, that the applicants appear at the hour of 2.00 o'clock P.M. on Monday, the 10th day of August, 1964, in the Court room of Division 4 Superior Court in Maricopa County, Arizona, to then and there present what they may

[File endorsement omitted]

desire concerning the issuance of this Writ; and it is further

Ordered, that the Clerk of this Court give notice to the person at the Arizona State Industrial School having the custody of the said minor of the time and place for hearing said application.

Dated, this 3d day of August, 1964.

Lorna E. Lockwood, Justice of the Supreme Court.

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

No. 164769

In the Matter of

PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a minor,

for a Writ of Habeas Corpus.

Phoenix, Arizona

Transcript of Proceedings—August 17, 1964

Before: Honorable Fred J. Hyder, Judge, Division No. 8, Presiding Without a Jury.

APPEARANCES:

For the Petitioners, Amelia D. Lewis, Attorney at Law.

For the Respondent, Robert W. Pickrell, The Attorney General, by Philip Haggerty, Assistant Attorney General.

LaVonne Ione Marek, Court Reporter.

[fol. 2] PAUL L. GAULT, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mrs. Lewis:

Q. Would you state your full name?
A. (No response.)
Q. State your full name?
A. Paul L. Gault.
Q. Where do you live, Mr. Gault?
A. Globe Mobile Homes Trailer Court, Globe, Arizona.
Q. All right. Have you lived there at least since February of this year?
A. Yes.
Q. How long have you lived up that way?
A. I have lived in Globe since September, 1960.
Q. All right. Are you the father of Gerald Francis Gault?
A. I am.
Q. Right. In whose custody is Gerald as of this time?
A. Fort Grant Industrial School.
Q. All right. Will you tell us about when he was taken [fol. 3] from your custody?
A. Let's see—
Q. Would it have been about June, 1964?
A. It would.
Q. Was this by an act of the Juvenile Judge of the Superior Court of Gila County?
A. It was.
Q. Mr. Gault, was there a hearing on a matter before the Juvenile Judge in Gila County, concerning Gerald?
A. Yes.
Q. Did you receive any formal written notice with respect to this hearing?
A. We got a—a little notice written by Flagg, the Probation Officer.
Q. What is Mr. Flagg's first name, if you know?

A. I do not know.

Q. Is it Charles Flagg?

A. Charles, yes. Right.

Q. Thank you. Right. And when you say "we," did you personally receive it?

A. No.

Q. Do you know who did receive it?

A. My wife.

Q. It was received at your residence, you believe?

[fol. 4] A. Yes.

Q. Did you ever see that notice, did you look at it, did you read it?

A. Yes.

Q. I show you what has been marked—what has been marked Petitioner's Exhibit 1 for identification and ask you if you recognize this?

A. Yes.

Q. Is that the—the only notification of the—of a hearing that you received?

A. To the best of my knowledge, that is it, yes.

Q. When you say to the best of your knowledge, could you have received some other note?

A. No.

Q. Then this is the only notice you received?

A. Yes.

Q. This notice says, "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964, at 11:00 a.m. as the day and time for further hearings on Gerald's delinquency," all of which is typed, and then in ink it is signed, "Flagg." Is that correct?

[fol. 5] A. That's right.

OFFER IN EVIDENCE

Mrs. Lewis: Your Honor, I ask that this be marked in evidence.

The Court: Any objection to Exhibit 1 being received into evidence?

Mr. Haggerty: No objection.

The Court: Exhibit 1 may be received in evidence.

By Mrs. Lewis:

Q. Mr. Gault, did you ever see a copy of a petition with respect to a charge against Gerald, for a crime, stating that the Court may—the child may need the protection of the Court as a delinquent child?

A. No.

Q. With respect to a proceeding against Gerald in the Juvenile Court of Gila County, in February of 1964, did you ever see any notice of that proceeding?

A. No.

Mr. Haggerty: I object to that. It is immaterial to this particular action.

The Court: Is that a prior hearing to the one in question?

Mrs. Lewis: Yes, your Honor. I believe—I am not certain, because I have nothing from the records of Gila County [fol. 6] which show it, but the child, according to the records, had been placed on six months' probation in that matter in February. This matter in June may have happened because of a re—revocation of a probation of the prior matter, and that was the reason why I considered that that may be important to the case.

Mr. Haggerty: Object on the grounds that this would go into the—only to the discretion of the Court in imposing the sentence, and this would be, in this hearing, it would be improper.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Mr. Gault, have you supported your child Gerald and cared for him in your home up to the time that his custody was taken from you?

A. Yes.

Q. Do you own a home for him now in which to care for him and support him?

A. Yes.

Q. Are you prepared to care for him and support him?

A. Yes.

Q. Who else lives in the home with you?

A. Me, my wife, and my oldest—

[fol. 7] Q. What is your wife's name, please?

A. Marjorie Gault.

Q. And—

A. My oldest son, Louis.

Q. Right. Did you attend in court at any time in June of 1964, with respect to this juvenile matter involving Gerald, yes or no, did you go to court?

A. Yes.

Q. Right. And would it have been on the date of notice, Monday, June 15th, 1964, at about 11:00 a. m.?

A. Yes.

Q. Were you present during the—at that time, in court?

A. Yes.

Q. Were you in the judge's chambers?

A. Yes.

Q. Who was present?

A. There was me, my wife, Judge McGhee, Flagg and Mr. Henderson.

Q. Who was Mr. Henderson, if you know?

A. He's a probation officer. And Ronnie Lewis, my son, Gerald Gault, and Mr. Lewis.

Q. Would that have been Ronnie's father?

A. That was Ronnie's father.

[fol. 8] Q. Right. At that time, were any—was any witness sworn to testify?

Mr. Haggerty: Objection. This is going into the weight of the evidence presented in the Juvenile Court. It is not a proper subject for habeas corpus.

Mrs. Lewis: If your Honor—

The Court: Yes.

Mrs. Lewis: Whether or not there was a proper hearing held on this matter I believe goes to the jurisdiction of

whether the boy's custody was properly taken from the parents. That's the whole gist of this matter, whether or not the Court had jurisdiction, and the—our claim that there was insufficient notice, that there was actually no proper hearing held as such, that whatever hearing was held was a matter of hearsay testimony given to the judge outside of the hearing of these parties and the child in question, except for what was said beforehand.

The Court: The law provides an informal hearing does it not? Are you saying that because they are not sworn or because they didn't take a witness stand, the hearing, in fact, was not held?

Mrs. Lewis: One of the claims would be, your Honor, [fol. 9] that in a matter as serious as taking custody of a boy from parents, that the Advisory Council of Judges of the National Council on Crime and Delinquency required, and they recite cases which I can present to your Honor, in which a commitment was revoked by an appellate court for failure to swear adult witnesses who were complaining against a child for a violation of a crime.

The Court: What do you have to say, Mr. Haggerty?

Mr. Haggerty: If we wish to go into the facts of the case, the State is prepared to go ahead and present evidence concerning the child's admission as to the matters involved. I just didn't think this was part of the scope of the hearing. I thought we were confined to Judge McGhee—

The Court: Well, I thought in chambers, and it was stipulated, that the only issue before this Court is whether the Court had jurisdiction in the matter to—on the commitment of the Gault boy. Is that true?

Mrs. Lewis: Yes, your Honor.

Mr. Haggerty: That is what I understood.

The Court: Now, you are not going into matters as to [fol. 10] the weight of the evidence, as to whether or not he should or should not have been committed, are you?

Mrs. Lewis: Maybe, your Honor, but I don't think it is necessary for a—the hearing at this time. That was my

position as stated to you in chambers. I have no objection to going into a hearing on the merits of whether or not the boy should be committed.

The Court: Well, that is a matter of appeal.

Mrs. Lewis: Pardon?

The Court: That is a matter for appeal.

Mrs. Lewis: There is no appeal presently.

The Court: I mean if there was a hearing.

Mrs. Lewis: The Supreme Court indicates—does not give an appeal from juvenile matters, therefore it must be on habeas corpus.

The Court: Well, then, you are asking the Court to determine whether or not the boy should or should not have been committed, on the evidence presented. Is that your position?

Mrs. Lewis: My position, actually, intended to be that these parents were illegally denied, or the custody of this child was taken from them. Whether or not the child should again—if there was insufficient notice, if there was insuffi- [fol. 11] cient due process, using the big word because there will be several charges under that that I will be making, that there was not due process; that if there was not due process, as far as these petitioners were concerned, and the boy is released, that he would then be permitted to go before Judge McGhee, if the probation officers and Judge McGhee wished it, on account of the charges, if he was not to be—and due process be given to the parents all over again, but I am prepared to go ahead with the whole basis and dispose of it here and now, if—

The Court: Yes. But the Court isn't called upon to determine that issue.

Mrs. Lewis: But, your Honor, if—

The Court: If there was no hearing, if there was no jurisdiction—

Mrs. Lewis: That is my opinion, and that is the reason; and what makes the hearing is counsel, and witnesses, and adult witnesses sworn. Whether a child witness should be sworn certainly is not jurisdiction of the juvenile judge.

The Court: Well—but you may proceed and ask him questions, and the Court will separate the admissible from the inadmissible.

[fol. 12] Mrs. Lewis: Thank you, Judge.

Q. At the time of this hearing about which we were talking, and which we say occurred on Monday, June 15th, in Judge McGhee's chambers in Globe, were there any persons—any adult persons sworn as witnesses?

A. No.

Q. Did any adult persons testify?

A. No.

Q. Did any adult persons talk to the Judge in your presence about Gerald?

A. No, with the exceptions of Mr. Flagg.

Q. The probation officer?

A. Yes.

Q. Right. Was Mr. Flagg sworn, was he sworn to tell the truth under oath?

A. There was no clerk of court for the—there, or anything, to swear—

The Court: Well, just answer the question.

The Witness: No.

By Mrs. Lewis:

Q. At any time prior to this hearing, or at the time of the hearing, did anyone warn you of the possible consequences, that is, that the boy might be taken from your custody and might be committed to the Industrial School?

[fol. 13] A. Not from court. Hearsay. We heard by the police and that that he could be put down—taken and put down in Fort Grant.

Q. Now, was this prior to the 15th of June, or was this after the hearing?

A. No, it was prior to the 15th of June.

Q. At any time prior to the 15th of June or at the start of the hearing, did the Judge or anyone else tell you that you had a right to engage a lawyer?

A. No.

Q. Did anyone tell you that you had the right to call witnesses?

A. No.

Q. Did anyone tell you that you had a right to subpoena witnesses?

A. No.

Q. Did you know that you had the right to subpoena witnesses?

A. Yes.

Q. Did anyone at that hearing make a statement that Gerald had committed a crime?

A. No.

Mr. Haggerty: I will object to this as calling for a conclusion. He is a layman and might not know what constitutes a crime.

[fol. 14] The Court: Objection sustained.

By Mrs. Lewis:

Q. Were you ever advised that your child was accused of a crime?

A. No.

Q. Did you know what Gerald was there for?

A. For making a phone call. That's all that was told me, and that was hearsay.

Q. Did you have any discussion with your son about it, prior to the hearing?

A. Yes.

Q. Did the boy understand that he was there for his making a phone call?

Mr. Haggerty: Objection. That is hearsay. The boy is here, he may testify.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Aside from what the boy told you, did you—did you have any other way of knowing what the boy was accused of?

A. No.

Q. Right.

Your witness.

[fol. 15] Cross examination.

By Mr. Haggerty:

Q. You state you were living—are living now at the Globe Mobile Homes?

A. Right.

Q. Were you living there on June 9th of this year?

A. Yes.

Q. Were you aware of the fact that your son was arrested on—on or about that date?

A. No.

Q. Do you know if your wife is aware of it?

A. On June the 9th—June the 8th, up until the 12th, I was in—working in Grand Canyon.

Q. So, you were out of town during that period?

A. Yes.

Q. Do you know Mr. Flagg?

A. Yes.

Q. You know of his position?

A. Yes.

Q. You stated that you knew you had the right to call witnesses, is that correct?

A. Yes.

Q. Did you also know that you had the right to retain [fol. 16] an attorney?

A. Yes.

Mr. Haggerty: I have no further questions.

Redirect examination.

By Mrs. Lewis:

Q. You were in Grand Canyon at least from June 8th until June 12th?

A. Yes.

Q. Right. How was it that you—I take it that you came back because you were at the hearing on the 15th. How was it that you came back?

A. Why, I called my wife up and told her about—

Q. Well, excuse me. Never mind what you told her, but as a result of a conversation with her, did you learn that there was going to be a hearing on the 15th?

A. No.

Q. Did you learn that the boy was in some difficulties?

A. Yes.

Q. Was it a result of that telephone conversation that you came back to Globe—

A. Yes.

[fol. 17] Q. Now, at any time did—did Mr. Flagg come to your residence and discuss your son with you prior to June 15th?

A. No.

Q. Did he ever ask you whether the boy was obedient?

A. No.

Q. Did he ever ask you about whether he helped his mother, whether he worked or did any chores?

A. No.

Q. Never asked you anything about the boy?

A. No.

Mrs. Lewis: No further questions.

Recross examination.

By Mr. Haggerty:

Q. Did you ever attempt to see Mr. Flagg?

A. (No response.)

Q. Did you attempt to see Mr. Flagg?

A. When Gerald was in—

Q. I will confine myself, now, to the month of June, 1964, prior to his commitment?

A. Prior to the commitment we was at the detention home and talked to Mr. Flagg, and we talked to Jerry at that time.

[fol. 18] Q. When was that?

A. That was on—

Q. Approximately?

A. No, I am—I am wrong. I didn't—I didn't at that time. From June the 8th till June the 12th, till he was released in my wife's custody, I did not talk to Jerry. It was after he was committed.

Q. But he was home during the weekend of the 13th and 14th, at least?

A. Yes.

Q. Saturday and Sunday.

I have no further questions.

Mrs. Lewis: No further questions. Please step down.

The Court: Well, I would like to ask the witness a question.

Mrs. Lewis: Oh, all right.

Examination.

By the Court:

Q. You say you were out of town from June 8th to June 12th?

A. Yes.

Q. When did you come back?

A. I come back on—it was midnight on Friday, June [fol. 19] the 12th.

Q. And upon your arriving in town, you learned that your boy was being detained?

A. The conversation with my wife over the telephone from Grand Canyon—

Q. Well, I am just trying to determine, when did you learn that your boy was being detained?

A. On the 10th, June the 10th.

Q. That's from a conversation with your wife?

A. Over the telephone.

Q. Over the telephone. Now, when did you get back to Globe?

A. Midnight, June the 12th.

Q. When you arrived at home, you talked to your wife?

A. Yes.

Q. Where was your boy at the time?

A. He was released sometime Friday afternoon to the custody of my wife.

Q. But was that before you got home?

A. Yes.

Q. And you talked to your wife?

A. After I—

Q. When you got home?

A. Yes.

[fol. 20] Q. Your boy was there?

A. Yes, sir.

Q. Now, between the—you talked to the boy, what the surrounding circumstances were?

A. Yes.

Q. Now, did you talk to Mr. Flagg before the hearing on June 15th?

A. No.

Q. Well, when did you talk to Mr. Flagg?

A. It was—the conversations that I had with Mr. Flagg was after he was—I can't say that word, but after the—he was sentenced on June the 15th, but before that—before the sentence. I didn't talk to Mr. Flagg about this case.

Q. Well, after having talked with your boy and your wife when you arrived home, did you make any attempt to talk to Mr. Flagg?

A. No. I had talked to Rod Weinberg, and he said there was no use in worrying or anything, anything about it, because there was no—

Q. No, I am asking you whether or not you made any attempt to talk to Mr. Flagg?

A. No.

Q. So you didn't talk to Mr. Flagg until after the hearing of June 15th?

[fol. 21] A. That's right.

Q. Did you know what the nature of the hearing was?

A. Only what my wife had told me.

Q. No, I mean at the time of the—just prior to the hearing, didn't you know what it was about?

A. Legally, no.

Q. What do you mean "legally, no"?

A. Well, I wasn't notified, only by Mr. Flagg, of a—notice that Jerry was to—to go up before Judge McGhee on Monday at 11:00 o'clock.

Q. I will hand you Exhibit 1. Didn't you have that in your hands before June 15th?

A. Yes.

Q. And you inquired no further?

A. Not through Mr. Flagg I didn't.

Q. But you did of other people?

A. Yes.

Q. And you attended the hearing?

A. Yes.

Q. You knew what the hearing was about, did you not?

A. I knew it was about making a phone call.

Q. But whatever the hearing was, you heard all the evidence, then?

[fol. 22] A. At the hearing, yes.

Q. All right.

I have no further questions.

Redirect examination:

By Mrs. Lewis:

Q. Just one—one thing further. Did you understand that your boy was charged with making a phone call, or some other boy?

A. I understood it was two boys that was charged with it.

Q. All right. Okay.

No further questions.

Recross examination.

By Mr. Haggerty:

Q. You stated—pardon me. In response to a question of Judge Hyder, that you heard all the evidence. What did you hear?

A. I heard Judge asking Gerald if he made the phone call.

Q. What did your son say?

A. He said he did not, that he dialed the number—well—that he dialed the number, and that the other boy done the talking.

Q. Did the other boy testify?

[fol. 23] A. Sir?

Q. Did the other boy testify?

A. Judge McGhee asked the other boy who done the—

Examination.

By the Court:

Q. Well, the question before you is, did the other boy testify at that time?

A. Yes.

Q. He did or did not?

A. He answered the questions that the Judge—Judge McGhee asked him.

Q. You were there?

A. Yes.

Q. You heard the questions asked?

A. I heard the questions asked in such a low voice that it was hard to make them out.

Q. Did you ever at any time inform anybody that you couldn't hear the proceedings?

A. No.

Q. Did anybody prevent you from hearing any of the proceedings?

A. No.

Q. Did they prevent you from asking any questions?

[fol. 24] A. Yes.

Q. You did—

A. I—

Q. Did you have an attorney?

A. No.

Q. And you asked questions?

A. I wanted to ask questions and talk to the—to Judge McGhee, and he wouldn't listen to me.

Q. But you could hear all that was going on?

A. Not all of it, no.

Q. But that's because—no one knew that you could not hear them, though, as far as you are concerned?

A. No.

Q. Is that right?

A. That's right.

The Court: I have no further questions.

Mrs. Lewis: May I just continue on that?

The Court: Very well.

Redirect examination.

By Mrs. Lewis:

Q. Were you able to hear Ronnie Lewis's answers?

[fol. 25] A. Yes.

Q. Did Ronnie Lewis say that Gerald made—used any of the language that appears in the—in your petition, and in the report?

A. He said he—

Q. I show you a copy of what has been marked Petitioner's Exhibit 2 in this case and ask you if you have seen this before?

A. No.

Q. I refer you to particularly not to the instrument now, but just to assist you, I refer you to the words—after Gerald says, "Ronnie asked this woman today—" I am referring you to the— To the three sentences after that.

Mr. Haggerty: I will object to this. If the witness has stated he didn't hear Judge McGhee's questions, I don't think his testimony as to what Ronnie answered would be enlightening at all.

The Court: Well, he can answer yes or no.

By Mrs. Lewis:

Q. Was any reference made in court to this conversation, that you could hear?

A. No.

Q. What were they talking about?

[fol. 26] A. About a telephone conversation. Now, this—the bottom part of this, I did not hear them bringing that out in court.

Q. It might have been brought out, but you didn't hear it, is that what you mean?

A. It could have been brought out, but I didn't hear it.

Q. Right. Would you—were you able to hear everything that Ronnie said?

A. Yes.

Q. Did Ronnie accuse Gerald of having made lewd remarks over the telephone?

Mr. Haggerty: I will object to this. It is also hearsay.

Mrs. Lewis: The conversation has been brought out.

The Court: Read the question, Miss Reporter.

(Whereupon the question was read by the Reporter.)

Mrs. Lewis: If your Honor please, the charge in this report—

The Court: Well, in view of his answers, he didn't hear all the testimony.

Mrs. Lewis: He didn't hear some of the Judge's questions, his voice was too low. That's what he said. I think—

[fol. 27] I think we ought to know whether he heard—he said that he heard everything that Ronnie said.

The Court: Well, did you or did you not hear everything that Ronnie said?

The Witness: Could—couldn't talk and say it the way I heard—

The Court: No, this Court is just asking you, did you hear what he said?

The Witness: Yes.

The Court: You heard all of what he said?

The Witness: Yes.

The Court: There is no part of his testimony you didn't hear?

The Witness: No.

The Court: Well, you say, "No," you are agreeing with that statement?

The Witness: I heard all of his testimony, yes.

By Mrs. Lewis:

Q. At any time did Ronnie say that Gerald made a lewd telephone call—

A. No.

Q. —or did he use any other language similar to that?

A. No.

[fol. 28] OFFER IN EVIDENCE

Mrs. Lewis: No further questions.

May I, as part of the record—I expected the original records would be here, but we only have copies.

The Court: Do you have any objection?

Mr. Haggerty: Well, it's an official document. I have no objections to it, except on the grounds of materiality.

The Court: All right. Exhibit No. 2—other than what you say—

Mr. Haggerty: I believe it is immaterial to this proceeding, just a juvenile referral report. I don't see the materiality here; except, of course, it was used to enlighten the

witness's memory, so I guess, on those—I will withdraw the objection to it.

The Court: All right, Exhibit 2 be received in evidence.

Mrs. Lewis: I have no further questions of Mr. Gault.

The Court: Do you have any further questions?

Mr. Haggerty: No further questions.

The Court: You may step down. Watch your step when you leave the stand.

Mrs. Lewis: Marjorie Gault.

[fol. 29] MARJORIE ANN GAULT, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mrs. Lewis:

Q. Your full name for the record?

A. Margaret Ann Gault.

Q. In the papers which I prepared in this proceeding, I called you Marjorie. Are you known as Marjorie?

A. That's right.

Q. Are you the wife of Paul Gault?

A. Yes, I am.

Q. And the mother of Gerald Francis Gault?

A. Yes, I am.

Q. You have lived with your husband in Globe at least since September, 1960, or about that time?

A. Yes, that's right.

Q. And were you present on June 15th, 1964, in the Judge's chambers in the Superior Court of Gila County?

A. I was.

Q. I will ask you first about that. How did you first come to know that Gerald was in detention on or about a date in [fol. 30] June, and—that date would have been, if you remember—

A. Well, the 8th day of June I come—Louis come up and got me where I was working, and we stopped at the store,

and it was about 6:00 o'clock when I come home. It was unusual for Gerald not to be there, so I got the dinner ready, and I says to Louis, I says, "You go down and see if Gerald's at Lewis's trailer."

I says, "If he is—" I said, "You tell him to get up here." He says, "Okay, Mom."

Q. Was Gerald at the trailer?

A. No, ma'am, Gerald was not.

Q. All right. As a result—as a result of the conversation with your older son, did you then go somewhere?

A. He says, "Mom," he says, "Mom, I don't want—"

Q. Did you have any further conversation?

A. Yes, I did.

Q. All right. Where did you go?

A. We went down to the detention home.

Q. And it was from—not from any of the authorities that you learned that your son was in detention, is that correct?

A. That's right.

[fol. 31] Q. You did find your son at the Detention Home?

A. I did.

Q. That was about what time, please?

A. That was about 7:30, 8:00 o'clock.

Q. Did you have any conversation with Mr. Flagg at that place?

A. Well, I asked him if I could talk—

Q. No. Yes or no, did you have any discussion?

A. No. No, I did not.

Q. Did you talk to him?

A. All I—I didn't talk to him, no. All I asked him, if Jerry was—

Q. But you did talk to him?

A. Yes, I guess that is talking to him.

Q. Right. During this conversation, did you have reason to ask him when Gerald would come up in court?

A. I did.

Q. Right. And did he tell—what did he tell you?

A. He says, "Tomorrow, about 3:00 o'clock."

Q. Right. That woud have been—

A. That would be on the 9th.

Q. Right. Did you then go to court on June 9th?

[fol. 32] A. I did.

Q. Right. Was this in the chambers of the Juvenile Judge of the Superior Court of Gila County?

A. That's right, it was.

Q. Who was present at that time?

A. There was my son, Louis, Gerald, Mr. Flagg, Mr. Henderson, and Judge McGhee.

Q. Who was Mr. Henderson, if you know?

A. Parole officer.

Q. Was anyone else present?

A. No, ma'am, there was not.

Q. Was Ronnie Lewis present?

A. No.

Q. Was Mr. Lewis present?

A. No.

Q. Were any other adults present?

A. No, ma'am, there wasn't.

Q. At that time, was anybody sworn to testify?

A. No, there wasn't.

Q. Did the Judge ask anybody any questions, and was there any answers made?

A. Well, he asked Gerald if Gerald made the phone call, and Gerald said no. He said he dialed the number and [fol. 33] asked the lady if this was such and such a number, and she said yes; and he says, "Well—" He says, "I will—" He says, "There is a friend of mine here wants to talk to you," and he says he handed the phone over to Ronnie, and Ronnie done the talking to this lady.

Q. At any time, at that time, was Gerald accused by anyone of any crime?

A. I didn't hear.

Q. Could you have heard everything that went on?

A. Yes, I could hear.

Q. Well, then, was any—was he accused of any crime by anyone?

A. Yes. Judge McGhee asked him if he did make the phone call.

Q. Judge McGhee asked him. Did anybody say that he did?

A. No.

Q. Did Mr. Flagg make any report to the Judge, in your presence?

A. No, not in my presence.

Q. Did Mr. Henderson make any report to the Judge in your presence?

A. No.

Q. Was anything further said by anyone at that hearing?

[fol. 34] A. No, there wasn't.

Q. Didn't Judge McGhee indicate what he was going to do with respect to the boy at that time, on June 9th?

A. No, he didn't.

Q. Did he say anything?

A. Yes, he says he'd think it over. I don't know, now, if I asked Judge McGhee, or if Jerry asked Judge McGhee, if he was going to be sent to Fort Grant; and he says, "No," he says, "I will think it over." He says, "I want a couple days to think it over." That's the reason why I didn't think we needed a lawyer.

Q. All right. Then the—if I may lead the witness a little just to clear up—did anything happen about this, then, up to the time that Mr. Gault called you the next day on the 10th?

A. No.

Q. Was it on the 10th that he called you?

A. Yes.

Q. And you—you said something to him and as a result—

A. That's right.

Q. —that he came down from Grand Canyon?

[fol. 35] A. That's right.

Q. Did he come home about midnight on Friday, the 12th, as he says?

A. That's right.

Q. All right. Did something happen with respect to Gerald, on Friday the 12th?

A. Well, on Friday the 12th, Mr. Flagg brought Jerry up to me where I was working.

Q. Now, when you say Mr. Flagg brought Jerry up, did you see Mr. Flagg?

A. No, I didn't.

Q. All right. What happened, and about what time was it on the day?

A. About 3:00 o'clock.

Q. And was this in the City of Globe?

A. That's right.

Q. About 3:00 o'clock, what happened?

The Court: Mrs. Lewis, if you desire to sit down, you may. You don't have to stand while—

Mrs. Lewis: Thank you, Judge. I am so accustomed, in my years of practice, where I wouldn't presume to do it, that I just am not accustomed to it.

The Witness: Gerald come up and he rapped at the door because I keep a screen door locked on account of the baby [fol. 36] creeping around on the floor, and the little ones hollered to me.

By Mrs. Lewis:

Q. Well, excuse me. Leave out any conversation. Did Jerry come to the door with Mr. Flagg, or alone?

A. No, he came alone.

Q. All right.

A. And he rapped at the door, and the children hollered, "Jerry's here," and I didn't believe them, so I went to the door and opened the door, and Jerry was standing there.

Q. Had you received any notice from—from the authorities or from Mr. Flagg, prior to this?

A. No, I didn't.

Q. That the boy was to be released?

A. No, I didn't.

Q. Did you receive any notice of any kind as to what was to happen to the boy?

A. No, I didn't.

Q. Prior to this time that he was released?

A. No.

Q. Right. Did you subsequently receive the notice marked Plaintiffs' Exhibit 1?

A. Yes, I received that.

Q. Right. Would you tell us the circumstances of how [fol. 37] you received it?

A. Well, I received that on Friday evening, about 5:00 o'clock. Mr. Flagg handed it to me where I was working.

Q. When Mr. Flagg handed it to you, what did he say, if anything?

A. He didn't say nothing. He just handed me the note.

Q. And as a result of that note, then, you appeared in court on June 15th?

A. That's right.

Q. Did you receive any other notice of this hearing?

A. No, I did not.

Q. I show you what has been marked a Petition in the Superior Court of Gila County, with a stamp at the top, "Filed, June 9th, 1964," marked, "Petition in the Matter of Gerald Francis Gault, a Delinquent Minor, Petition No. 2379," and I ask you if you have ever seen this before?

A. No, I have not. This is the first.

Q. Pardon me?

A. I have not seen that before.

Q. Well, did you—did I show this to you at the desk here a few minutes ago?

A. Yes, a few minutes here, but I—

[fol. 38] Q. But before that, you have never seen that?

A. That's right, I had never seen that in Globe.

Q. Then you had never received a copy of—

A. No.

Q. —this petition, or any petition in this matter?

A. No, I have not.

Q. I show you a copy of what has been marked Plaintiffs' Exhibit 2 and which is entitled, "Juvenile Referral Report," and "Name: Gerald Gault, age: 15, Birth date: 1-28-49," at the top. Does that refer to your son?

A. That's right.

Q. It has the name, mother, here, as Marjorie. Is that you? Is that correct?

A. That's right, but that name is spelled wrong.

Q. All right. Is the father's name on that sheet?

A. No, it is not.

Q. Did Mr. Flagg or Mr. Henderson or anyone, on account of the juvenile report, have any discussion with you about Gerald's conduct?

A. No.

[fol. 39] OFFERS IN EVIDENCE

Mrs. Lewis: I think I better ask to have this marked in evidence before I forget.

Mr. Haggerty: No objection.

The Court: Do you have any objection as to the petition being received in evidence—

Mr. Haggerty: No objection.

The Court: Which has been marked Exhibit 3. Exhibit 3 is received in evidence.

By Mrs. Lewis:

Q. Did anyone ever discuss with you, on behalf of the juvenile court, whether Gerald behaved himself at home?

A. No.

Q. Whether he worked after school?

A. No.

Q. Whether he went to Sunday School or to Church?

A. No.

Q. To what church he belonged?

A. No.

Q. Whether he was in good physical health?

A. No.

Q. At any time, up to June 15th, at 11:00 o'clock, or at any time after June 15th, at 11:00 o'clock, the approximate time of the hearing, did anyone ever warn you of the possi-
[fol. 40] ble consequences of this proceeding, that is, that the boy might be committed—

A. No.

Q. —and taken from your custody?

A. No.

Q. Did anyone ever advise you that you had the right to engage an attorney?

A. No.

Q. Did anyone ever tell you that you had the right to subpoena witnesses, to call witnesses on behalf of your side, your son?

A. No.

Q. To cross examine any witnesses that might be brought in?

A. No.

Q. Coming to— Now, to the hearing on June 15th, you have heard your husband testify that Judge McGhee, your husband, yourself, and your—your two boys—

A. No, just the one boy.

Q. Just Gerald?

A. Gerald.

Q. And Ronnie Lewis and his father, Mr. Lewis, and Mr. Flagg and Mr. Henderson, the Juvenile Probation Officers, were present at that time?

A. That's right.

[fol. 41] Q. Was anyone else present at that time?

A. No, there wasn't.

Q. Was any other hearing or proceeding held at which any person, adult or juvenile, accused Gerald of a crime?

A. No.

Q. Did you understand for what Gerald was in detention, and what the proceeding was?

A. No.

Q. What did you understand about it?

A. Well, I just understood that Gerald dialed the number, and that he—and he handed the phone over to Ronnie.

Q. Did you understand that—that Gerald was being accused of making the telephone call?

A. Yes.

Q. At that hearing, did you make any statement or any request with respect to witnesses being present?

A. No.

Q. Were you in error, then, when you told me that you asked the Judge why Mrs. Cook wasn't present?

A. Oh, is that the one you mean? Yes, I asked Judge McGhee.

Q. Well, we want whatever conversation you had [fol. 42] about—

A. Well, I asked Judge McGhee why Mrs. Cook wasn't present, and they said she didn't have to be present at that hearing.

Q. All right. Did you understand why you wanted—why did you want Mrs. Cook present?

A. Well, I wanted Mrs. Cook present so she could see which boy that done the talking, the dirty talking over the phone.

Q. Well then, you had been advised that Mrs. Cook was the person who was claiming that she had had a telephone call made to her, is that—

A. I was.

Q. And—I am sorry. You stated what Judge McGhee said to you, but I didn't listen for the answer.

A. Well, I asked Judge McGhee why Mrs. Cook wasn't there, present, and he said she didn't have to be.

Q. And did—did you ask to cross examine any of the witnesses?

A. No.

Q. Did you—were you able to hear all of the conversation that went on?

A. Well—no, I couldn't hear all that Judge McGhee said. [fol. 43] Q. Could you hear everything that everybody else said?

A. I could.

Q. Did you hear anybody at that time accuse Gerald of having made an indecent or a lewd or an obscene or any kind of a telephone call?

A. No.

Q. Did they accuse him of any other crime at that time?

A. No.

Q. I show you what has been marked as Plaintiffs' Exhibit 4 for identification, and which is a photostatic copy of a commitment to the State Industrial School in Case 2379, out of the Superior Court of Gila County, in the matter of Gerald Francis Gault, a Delinquent Minor, and ask you if you have ever seen that before?

A. No. I never seen that before, only here.

Mrs. Lewis: Your Honor, I ask you to take judicial notice of the commitment to the State Industrial School in this case.

Mr. Haggerty: No objection.

Mrs. Lewis: And therefore, I asked—

The Court: What exhibit is that?

[fol. 44] Mrs. Lewis: 4.

The Court: Exhibit 4 will be received in evidence.

Mrs. Lewis: For the record, may we state that that commitment is dated June 15, 1964.

The Court: Does it so show?

Mr. Haggerty: I believe it does.

Mrs. Lewis: Yes.

Your witness.

Cross examination.

By Mr. Haggerty:

Q. Did you attempt to talk to Mr. Flagg or Mr. Henderson, the other probation officer, concerning the case, prior to the commitment?

A. Yes.

Q. When did you make that attempt?

A. On the 9th day of June.

Q. That was the date of the first appearance before Judge—

A. That's right.

Q. —McGhee. At the time of that first appearance, were you informed of the general nature of the charges against your son and Ronnie?

A. Yes.

Q. You knew it concerned an allegedly indecent phone [fol. 45] call made to the woman in the vicinity?

A. That's right.

Q. And you knew the name of the alleged victim, Mrs. Cook?

A. That's right.

Q. How did you find that out?

A. She was my neighbor.

Q. Did she tell you?

A. No.

Q. Well, how did you find it out?

A. Gerald told me.

Q. When did he tell you this?

A. In the detention home when I went down to see him.

Q. So you did then visit him while he was in the detention home?

A. Yes, my son took me down. That's whenever I first knowed it was about 8:00 o'clock at night on the 8th.

Q. Did you visit him any other time—

A. Yes.

Q. —at the detention home? So you had free access to him?

A. First I had free access, I could go down and see him on the 8th and 9th—or the 9th and 10th, rather.

[fol. 46] Mrs. Lewis: Excuse me, your Honor. I don't think that this particularly has materiality.

By Mr. Haggerty:

Q. Who is this Ronnie whose name has been mentioned?

A. A neighbor.

Q. Is he a friend of your son?

A. He was.
Q. Classmate?
A. That's right.
Q. Do you know approximately how old he is?
A. I couldn't tell you.
Q. How old is your son?
A. Fifteen.
Q. When is his birth date?
A. 23rd of January.
Q. And you have stated that you saw this Exhibit 1, the notice from Judge—from Mr. Flagg, informing you of the time and place of the hearing?
A. That's right.
Q. What did you tell your husband concerning the case when he returned from Flagstaff?
A. Oh, I didn't have much to tell him because I—all I knowed is that Jerry was down to the detention home.
[fol. 47] Q. Well, at the time he came back from Grand Canyon, Jerry was out of the detention home, wasn't he?
A. Yes.
Q. Did you hire a lawyer?
A. No.
Q. Did you discuss—
A. No, after I heard Judge McGhee say he was turning it over for a day or so, and I saw Rod Weinberg outside, and I asked him. He said, "No, Gerald's going to be on probation for a year," so I—
Q. Who is Mr. Rod Weinberg?
A. My landlord. Well, he's the Chief of Police, but he's still my landlord.
Q. He's a city policeman of the City of Globe?
A. That's right.
Q. But he is not a juvenile officer?
A. No.
Q. So, at the conclusion of the hearing, Judge McGhee stated that he did not know what disposition he would make?
A. That's right. He said he had to think it over a couple days.

[fol. 48] Q. And then four days later, you received a notice to appear before him again?

A. That's right.

Q. Did anybody tell you you couldn't have a lawyer?

A. No, they didn't.

Q. Did anybody tell you they could—that you could not subpoena witnesses?

A. No.

Q. Do you have a telephone?

A. Yes.

Mr. Haggerty: I have no further questions.

The Court: I have a couple of questions.

Examination.

By the Court:

Q. Mrs. Gault, you did not get a lawyer?

A. That's right.

Q. But no one led you to believe that you could not have a lawyer?

A. That's right.

Q. You knew you could have a lawyer?

A. I could have had if I wasn't—

Q. No. No, I mean, you knew of your rights, that you could have a lawyer?

A. Yes.

[fol. 49] Q. You knew that you could subpoena witnesses?

A. Yes.

Q. You were at the hearing?

A. That's right.

Q. You say you did not get a copy of the petition?

A. I did not.

Q. But you were aware of the contents of the petition?

A. That's right.

Q. And you had notice of the hearing?

A. That's right.

Mrs. Lewis: In order to save time—

The Court: Just a moment.

Mrs. Lewis: I am sorry, Judge. I thought you were finished.

By the Court:

Q. Now, Judge McGhee, on the 9th, did not tell you what disposition was made of the case? That was not the hearing, was it?

A. That's right.

Q. And you receiyed this Exhibit 1?

Mrs. Lewis: Excuse me, Judge. Could I interrupt you just a moment. I didn't hear the end of the question, your question to which she said— Did you say which was the [fol. 50] hearing?

The Court: Well, read the question.

Mrs. Lewis: Please forgive me. Read the question.

(Whereupon the question was read by the Reporter.)

By the Court:

Q. So there would be no misunderstanding, that was not the conclusion of all the hearings concerning your son?

A. That's right.

Q. And you received Exhibit 1, which you know the contents of Exhibit 1?

A. Yes.

Q. Which states, "For further hearing on Gerald's delinquency"?

A. That's right.

Q. So you knew the issue of that hearing was as to the conduct or any delinquent conduct on the part of your son?

A. That's right.

Q. Judge—you are not saying Judge McGhee had informed you that your son would not be committed?

A. No, he did not.

Q. He had stated to you he had not made up his mind?

[fol. 51] A. That's right.

Q. That was prior to the time that you received this notice for hearing on June 15th?

A. That's right.

The Court: I have no further questions.

Mrs. Lewis: Thank you. Do you want anything further of her?

Mr. Haggerty: No.

Mrs. Lewis: Please step down. So—

The Court: Watch your step when you leave the stand.

Mrs. Lewis: —to save time, Judge, I would like to avow —would you stand up, Louis; that if you were to testify, in so far as you were present at the hearing, you would support what the previous two witnesses have testified to.

Louis Gault: The first hearing.

Mrs. Lewis: Do you want him on the stand?

Mr. Haggerty: No.

Mrs. Lewis: Okay. Would you accept that, Judge?

The Court: I didn't clearly—read that back, please.

(Whereupon the record was read by the Reporter.)

[fol. 52] The Court: For the record, this is Louis whom?

Mrs. Lewis: Gault.

Mr. Haggerty: The brother of the—the older brother.

The Court: And this is on the—as to the June 9th hearing?

Louis Gault: Yes.

Mrs. Lewis: Yes, Judge.

The Court: And he was not present on June the 15th?

Mrs. Lewis: He was not present on the 15th.

The Court: You—

Mr. Haggerty: I have no objection to such an avowal. I stipulate to it.

CHARLES DOUGLAS FLAGG, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mr. Haggerty:

Q. Will you state your full name, please?

A. Charles Douglas Flagg.

[fol. 53] What is your occupation, please?

A. Deputy Probation Officer, Gila County.

Q. Are you familiar with Gerald Francis Gault, a minor?

A. I am.

Q. You have heard the testimony here today in the courtroom?

A. Yes, sir, I have.

Q. Were you present at the hearing on June 9th?

A. Yes, sir, I was.

Q. Do you recall what information was provided Mr. Gault and Mrs.—and his mother, concerning the offense against him, offense charged against him?

Mrs. Lewis: Excuse me, your Honor. I would like the question a little more definite as to who furnished the information, and so on, who was present.

The Court: Well, he can answer the question yes or no.

The Witness: Yes. In the hearing.

By Mr. Haggerty:

Q. In the proceedings before Judge McGhee, on June 9th?

A. Excuse me, would you restate the question?

[fol. 54] Q. You recall who was present, then?

A. Yes, sir, I do.

Q. Who was—

A. Judge McGhee, Jerry Gault, Gerald's brother, Louis, his mother, Mr. Henderson and myself.

Q. Were you present during the entire time?

A. Yes, sir.

Q. Do you recall what was said to Mrs. Gault at that time, by Judge McGhee?

A. I am not sure what the Judge said directly to Mrs. Gault.

Q. Do you recall talking to her yourself?

A. Yes, sir.

Q. In your capacity as Assistant Probation Officer?

A. Yes. That was on June 8th, the evening of June 8th.

Q. Let us get back to the—to June 9th, when you were before Judge McGhee. Did you talk to her then?

A. No.

Q. All right. Go back to June 8th. Did you have occasion to talk to her then?

A. Yes. She came to the detention home where I am superintendent, and wanted to see Jerry, and wondered [fol. 55] why he was there. I told her why he was there, explained the whole thing to her, her and Louis, the boy—the older boy came that evening. I let her talk to Jerry, and then I told her why Jerry was there. I believe, I can't say for sure, but I am almost positive I said the hearing—well—"I am going to try to set a hearing for next day."

Q. Were you present at the next day?

A. Yes, sir.

Q. That was when Judge McGhee, the two brothers and the mother were also present?

A. The two Gault boys.

Q. Two Gault boys, yes. Where was that?

A. In the Judge's chambers.

Q. Do you recall if Mrs. Gault asked any questions at that time?

A. No, I—I don't know for sure.

Q. Did her son, not the older boy?

Mrs. Lewis: Louis—oh, Gerald.

By Mr. Haggerty:

Q. Gerald, did he ask any questions at that time?

A. Oh, I am sure he did, but I couldn't say what they were.

Q. Were you present at the hearing on June 15th?
[fol. 56] A. Yes, sir.
Q. Is your recollection of who was present the same that was testified to by the previous witnesses?
A. Yes, sir.
Q. Did the Gault boy testify at that time?
A. Yes, he did.
Q. Did the other juvenile testify at that time?
A. Yes, he did.
Q. Do you recall the substance of that testimony?
A. Essentially both boys admitted making the calls. It was a question—each boy placed the blame of the lewd language onto the other.

Mrs. Lewis: If you are—all right.

By Mr. Haggerty:

Q. But neither one of them admitted making the actual remark, then?
A. Not in that hearing. They did in the previous hearing. The Gault boy made the—admitted making the phone calls.
Q. By the previous hearing, you mean the proceedings on June 9th?
A. Yes, sir.
[fol. 57] Q. When you say make a phone call, what do you mean?
A. Well, the phone calls in question, calling—calling these women and saying what was said.
Q. Was his mother present at that time?
A. Yes, sir, he was—she was.
Q. And at that time, did he state that he had actually talked to Mrs. Cook or whoever answered the phone?
A. Yes.
Q. In other words, that he had done more than dialing the phone?
A. Yes.
Q. Was Judge McGhee present at that time?
A. Yes, he was.

Q. Then, in substance, at the hearing on June 15th—oh, he retracted that portion of his testimony, then?

A. Well, I am not sure that he retracted it.

Q. But he stated the other boy had made the conversations?

A. Yes.

Q. Do you recall Mr. Gault asking any questions of any witness?

[fol. 58] A. He talked to the Judge, asked the Judge some questions. I am not sure what they were.

Q. What is this Ronnie's last name?

A. Lewis.

Q. Lewis. Did he ask any questions?

A. Well, again I couldn't be sure of what they were. I feel sure that he did.

Q. Did Mrs. Gault ask any questions?

A. Yes.

Q. Were they answered?

A. Oh, yes.

Q. Had you ever talked to Mr. or Mrs. Gault concerning the obtaining of an attorney for their son?

A. No.

Q. Did Mr. Gault ever talk to you prior to the hearing on June 15th?

A. No, sir.

Q. Did Mrs. Gault ever—

A. Yes, sir.

Q. Did you ever advise her concerning her rights to counsel?

A. No, I didn't.

Q. Or concerning witnesses?

A. I—I don't think so.

[fol. 59] Q. Did you ever discuss with her whether or not Mrs. Cook would be present at any hearing?

A. She asked me who the woman was that was called, and I told her. That was back again Monday night, the 8th.

Q. That was the first time that—

A. Yes.

Q. When Ronnie was picked up?
A. The same—same day, June the 8th, Monday.
Q. Did he also appear before Judge McGhee on June 9th?
A. Not on the 9th, no, sir.
Q. Did you have any hearing other than the one on June 15th?
A. No, sir, he didn't.
Q. Are you sure of the hearing on June 9th, young Gault admitted making—actually talking over the phone himself?
A. Yes, sir, he did.
Q. That those remarks were obscene or could be considered obscene?
A. Yes, sir.

Mrs. Lewis: What was your answer?
The Witness: Yes.
Mr. Haggerty: I have no further questions.

[fol. 60] Cross examination.

By Mrs. Lewis:

Q. Are you saying, then, that Gerald lied?

Mr. Haggerty: Pardon me. I didn't say—who lied?

By Mrs. Lewis:

Q. Are you saying, then, that Gerald lied?

Mr. Haggerty: When?
The Witness: Yes.

By Mrs. Lewis:

Q. I would be prepared for you to tell me any number of occasions of—if that is what you are going to say.
A. I interrogated Gerald for three hours one night before I got the truth out of him on another matter.
Q. Excuse me just a minute. I want to write that down.

The Court: The Court Reporter is taking it down, Mrs. Lewis.

By Mrs. Lewis:

Q. We are addressing ourselves to the charge in your—and by the way, is that your Juvenile Referral Report, Exhibit 3—Exhibit 2, I am sorry. Is this your report?

[fol. 61] A. Not the top half. The bottom half is.

Q. Well, you are saying that—that you didn't write this part, but this—this is your report?

A. No, I say I didn't write this, but I wrote this here (indicating) down.

Q. Well, whose report is this? Are you familiar with it?

A. This is the Court Report. I did not write it. It is not my report, it is Mr. Henderson's report. But it is the—a copy of the Standard Report that is made by the Juvenile Court.

Q. This is not a report that is made by the Probation Officer for the Juvenile Court?

A. Yes, it is.

Q. This is made by the Court?

A. This is made by the Probation Officer.

Q. Then this is the report of your Department?

A. Yes, it is.

Q. You are saying that the top part was filled in by Mr. Henderson, and the Court action at the bottom was filled in by you?

A. Correct.

Q. Did you investigate this matter, or did Mr. Henderson?

[fol. 62] A. We both did.

Q. On what date did you make your investigation?

A. Let's see. If I remember correctly, I came to the detention home at approximately 4:00 o'clock, June the 8th, and it was—our decision that Gerald and Ronnie should be detained, a hearing was held the 9th, I talked to Gerald later that evening, and the morning of the 9th. I called the woman in question on the 9th.

Q. On the telephone?

A. Yes, ma'am. When the Judge decided to continue it until the 15th, I did some more investigation the rest of the week until the 11th.

Q. All right. What investigation did you do?

A. Well, I checked into the phone calls. I talked to Jerry more to see if he would—would tell me any more. I talked to Ronnie Lewis some more, looking for a change of stories, perhaps.

Q. Why did you need a change of stories?

Mr. Haggerty: Objection to the form of the question. There is no question—statement that he needed a form of change.

The Court: Overruled.

[fol. 63] The Witness: I didn't need a change of stories. It's just been my experience that very often it is changed.

By Mrs. Lewis:

Q. Is it your statement, Mr. Flagg, that Jerry admitted to you that he did some talking that was obscene over the telephone? Is that what he said to you, that he did some obscene talking over the telephone, or any words you are—the report of your department said?

The Court: Now, ask him one question at a time, Mrs. Lewis, so—

By Mrs. Lewis:

Q. Your report says "lewd." Use any word you wish.

A. Well, I didn't write that.

Q. If you had written it, what would you have written?

A. Gerald was picked up by the Sheriff's office in connection with a lewd and obscene phone calls and then, if I did some further interrogation and found some more, I would probably include that on there, too.

Q. Right. Are you responsible for investigating crimes that juveniles are charged with?

A. It all depends on how it is referred to the Juvenile [fol. 64] Court.

Q. In this case, we are talking about this case. Now, did you investigate the crime with which Gerald was charged?

A. Yes.

Q. Right. Now, will you tell us the crime with which Gerald was charged?

A. Delinquency. He was charged with making these phone calls, delinquency.

Q. What, Mr. Flagg, is delinquency, as you are responsible for it in your job?

A. Anything that contributes to the health, welfare and morals of the child. It's in the statutes there, I am not sure what it says.

Q. Oh, yes, it's in the statute, and I am sure of what it says. May I read it to you:

"A. A child who has violated a law of the State or an ordinance or regulation of a political subdivision thereof."

Is that what you were charging Gerald with?

Mr. Haggerty: Object to the form of the question. He—and I would like to have counsel cite what statutes she is reading from.

The Court: Objection sustained.

[fol. 65] By Mrs. Lewis:

Q. I show you Plaintiffs' Exhibit 3, the Petition, and ask you whether you signed this petition?

A. Yes, I did.

Q. And in this Petition, did you charge this child is a delinquent minor?

A. Yes, I did.

Q. I ask you now on what did you base that charge?

A. On the fact that the phone calls were made, and when they were traced, it went to his home. And the fact that when I asked him to recite Mrs. Cook's phone number, he recited it like it was his own.

Q. Now, I will ask you again, did Gerald tell you that he used any indecent, obscene, lewd, or whatever you want to call it, language, to Mrs. Cook over the telephone?

A. No.

Q. Could you answer that yes or no?

A. No, he didn't.

Q. He didn't say to you that he did?

A. No.

Q. Are you saying now that Ronnie told you that Gerald did?

[fol. 66] A. Both boys said—

Q. I am sorry.

A. Excuse me.

Q. Did Ronald tell you that Jerry used some such language?

A. Yes.

Q. Did Ronald say that in court at the hearing?

A. Yes, he did.

Q. He did?

A. (Nodding affirmatively.)

Q. At which hearing would this have been?

A. The second one Ronnie wasn't there. The first hearing.

Q. Did Ronald accuse Gerald in court out of the presence of Gerald?

A. No.

Q. Was the only hearing that Ronald had, the one of June 15th?

A. You said Ronnie?

Q. Yes.

A. Yes.

Q. All right. Now, I will ask you under what section of the law you found this child to be delinquent?

Mr. Haggerty: Objection. It is calling for a conclusion [fol. 67] of the witness. He didn't find anybody to be delinquent, only the judge did.

The Court: Objection sustained.

Mrs. Lewis: If your Honor please, he made a petition in which he alleges that this was a juvenile delinquent.

The Court: Well, he doesn't make any finding, Mrs. Lewis. It is up to the Court to determine from all the facts and circumstances as to a conclusion reached.

By Mrs. Lewis:

Q. In connection—

The Court: He may have alleged it, but he didn't find him—

By Mrs. Lewis:

Q. All right, we will go on that basis. On what basis did you allege that he was a delinquent?

A. Do you want me to recite the statute or—

Q. Well, may I recite Section 8-201, which defines a delinquent child to include—I will start at the bottom:

"(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or [fol. 68] others."

Did you charge him under that?

A. When we file a petition, we set no specific charge in it, other than delinquency.

Mr. Haggerty: I object at this time, and on the grounds the particular statute involves, which states that the petition shall not allege the facts: I refer to A. R. S. 8-222 B.

"The powers of the Court may be exercised upon the filing of a petition by any—"

The Court: Objection sustained.

Mrs. Lewis: The petition must state that there has been a delinquency and must give at least something to show to substantiate this delinquency. It must not, I take it, set out the facts.

The Court: Where does the statute say that it must do that?

Mrs. Lewis: Pardon me?

The Court: What the statute says is that—

Mrs. Lewis: Due process, Judge says it. That there must be sufficient notice to the father and mother of what the child is accused of, and Mr. Flagg telling them that evening in the courtroom doesn't make it.

[fol. 69] The Court: Objection sustained.

Mrs. Lewis: Excuse me, but I didn't mean to be so harsh, but it's just that it is getting to me.

Q. Mr. Flagg, did you advise Judge McGhee with respect to the sentencing of this child?

A. I don't understand what you mean.

Q. Did you advise Judge McGhee with respect to the sentencing of this child what you thought should be done with the child in this case?

Mr. Haggerty: I object to this as immaterial.

The Court: Objection sustained.

By Mrs. Lewis:

Q. What is your function, or what was your function in this case, in assisting Judge McGhee in this case?

Mr. Haggerty: Object to that on the grounds that it is immaterial.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Did you make any investigation with respect to the home conditions of Gerald, for the Judge?

A. Not—not in June. I did in February on the previous delinquency.

[fol. 70] Q. Did you make any inquiries as to whether or not the child obeyed his parents?

A. Again, not in June, but in February.

Q. All right.

The Court: What is the purpose of this type of questioning, Mrs. Lewis, in view of the stipulation of counsel that it is a question of whether the Court had jurisdiction? It isn't the sufficiency or insufficiency of the evidence.

Mrs. Lewis: That is true. That is very true.

The Court: Nor does this Court, to say whether its judgment would be the same as the other Court. The only issue before the Court is whether the Court had jurisdiction in this matter.

Mrs. Lewis: That's right. All I am trying to—all I have shown by this, and I guess it has no relevancy here, is how little was done in this case with respect to a probation report.

The Court: Well, if I view it correctly, you are trying to say that the evidence was insufficient for—of any crime having been committed, therefore the Court didn't have jurisdiction, irrespective of proper notice?

Mrs. Lewis: That is right.

I have no further questions of this witness at this time.

[fol. 71] The Court: Do you have any further questions?

Mrs. Lewis: I should ask one more thing, I am very sorry.

The Court: Very well.

By Mrs. Lewis:

Q. Did you ever warn the parents of the possible consequences?

A. I didn't, the Judge did.

Q. Were you present when the Judge did?

A. Yes, he always does.

Q. And at—was this at June 9th, June 15th, or both times?

A. Both times.

Q. Both. And is there a record made of this proceeding in the Judge's chambers?

A. No. You mean a recorder's—

Q. Yes.

A. You mean the reporter's record?

Q. That's right.

A. No. No, there is not.

Mrs. Lewis: That's right. No further questions.

[fol. 72] Redirect examination.

By Mr. Haggerty:

Q. Do you recall delivering a message to Mrs. Gault concerning the hearing?

A. Yes.

Q. I believe this is Exhibit 1. Do you recall when you delivered that?

A. Yes, sir. It was the night—the afternoon, probably, oh, 3:30, of June the 11th, Thursday.

Q. On Thursday, June 11th.

The Court: For the record, you are referring to Exhibit 1?

Mr. Haggerty: Yes. For the record, I am referring to Petitioners' Exhibit No. 1. I have no further questions.

Recross examination.

By Mrs. Lewis:

Q. Excuse me. What—did there come a time when you returned Gerald to his mother at her place of employment?

A. Yes, ma'am, there was.

Q. And she has testified that was Friday, June 12th, at 3:00 or 3:30. I have forgotten the hour. Does that appear to be correct to you?

[fol. 73] A. No, ma'am, it isn't.

Q. Do you have any records in the case which will show that it was not Friday the 12th?

A. I was in Phoenix the 12th. I left Globe Thursday night the 11th, at about 5:00 o'clock. I was best man at a wedding, the 13th, and the wedding party dinner was the 12th.

Q. I am asking you if there are any records in the file in court when you returned custody, physical custody of the child, to the parents?

A. In the detention home record there would be, yes, sir.

Q. Do you have that report with you?
A. No, I don't.

Mrs. Lewis: No further questions.
The Court: You may step down. Watch your step when you leave the stand.
Call your next witness.
Mr. Haggerty: Judge McGhee.

[fol. 74] Robert E. McGhee, having been first duly sworn, took the stand and testified as follows:

Direct examination.

By Mr. Haggerty:

Q. Will you state your name and occupation for the record, please?
A. Robert E. McGhee, Judge of the Superior Court of Gila County, Globe, Arizona.
Q. Are you familiar with Gerald Francis Gault?
A. I am,
Q. Are you familiar with the case surrounding his commitment as a juvenile?
A. I am.
Q. Do you recall seeing him and his mother on June 9th of this year?
A. I do.
Q. When and where did that—where did that take place?
A. In—in my chambers.
Q. Who else was present, do you recall?
A. At that time, his older brother, his mother, Mr. Henderson, the Chief Probation Officer and Mr. Flagg, Assistant Probation Officer.
[fol. 75] Q. What was the purpose of that meeting?
A. They had been notified to appear for hearing concerning a charge that the son had been making certain lewd phone calls.

Q. Did you inform them of the fact at that time, Mrs. Gault?

A. I am sure I did.

Q. Did you have occasion to examine the minor, Gerald Gault?

A. Yes, I talked to Gerald Gault and asked him questions concerning this.

Q. Was his mother present at that time?

A. His mother was present.

Q. Do you recall what he stated at that time?

Mrs. Lewis: Excuse me, your Honor. If I have been ruled out on this before, I would like if we may now not stick—not go into the issue of the minor who was in court at this time, as conflict of testimony between the parties, and stick to the issue that is raised in the petition.

The Court: Well, you are saying they had no notice and they weren't informed of the—

Mrs. Lewis: That's right. But of the—what the boy said to the judge at this time, I thought—

[fol. 76] Mr. Haggerty: Seems to me—

The Court: On what ground?

Mrs. Lewis: On the ground that that would be no part of the issue before the Court at this time.

Mr. Haggerty: Seems to me that counsel has tried to make the evidence an issue.

The Court: Overruled.

The Witness: Yes, the boy admitted that he had called the number of the lady—I have forgotten the name. He said that he had not done most of the talking on this occasion, that the other boy, the Lewis boy, had done most of it. He admitted that he knew the phone number, he told me that he had called that number several times before; that he got it originally by—just dialing a number, and he got the number, and he recited the number. He knew definitely what the number was. I asked him, "Have you ever made phone calls like this before?" Well, he said the only time was over sometime before when—before his

family moved to this area. He and his older brother, who was in chambers at the time, had made phone calls at this other place. He said that he had used no lewd names or anything like that in the previous calls, but that he had, [fol. 77] he and his brother, made silly calls, or funny calls, or something like that. I have forgotten the exact term, but that was the general meaning of the phone calls. He admitted at that time that he had said some lewd words. It was concerning sex, and if I remember right, the one he had used, would she give him a little; but there was some other—other words about "Have you got big bombers," or things like that. Now, he admitted making one of these statements. I don't remember exactly which one it was, but he admitted making one of those. But he accused the other boy of doing most of the talking, and—

By Mr. Haggerty:

Q. Was that pretty much the extent of your examination?

A. Well, no. We—I do remember—remember of him—there was some talk about his school work, how he got along in school, and some talk about him wanting to go to—to Grand Canyon with his father. He said that if his father hadn't let him down—his father had promised to take him to the Grand Canyon, but then when it came time to go, he just went off and left him; and he cried, he said, well, if—if his dad had just taken him to the Grand Canyon, this would all never have happened. We also talked—there [fol. 78] was quite a discussion at the time about his previous times in court, and I remember specifically telling him that, "You remember when you were here before I told you what might happen if you would get into trouble." There was some discussion that—on other occasions he had been falsely accused. All these other charges he had been somewhat falsely accused, except the one in February he did admit being involved in this.

Q. Were his parents present the entire time?

A. His mother was present the entire time, yes.

Q. What was the conclusion of that proceeding?

A. The conclusion was that I wanted to consider the matter further. I told him, "I am going to think about it, and—and let you know something about it in the future," or something to that occasion—or to that effect, I mean.

Q. Did Mrs. Gault say anything to you about her right to have a lawyer represent her?

A. There was no discussion of that, I believe.

Q. Was there any discussion of subpoenaing witnesses?

A. I believe not, no.

Q. When was the next time you had occasion to discuss [fol. 79] with Mrs. Gault, or—

A. The next time, I believe, is the 15th, that date that has been testified to. I believe that's the correct date, the 15th of June.

Q. Does your memory coincide with those of the other witnesses here as to who was present?

A. I believe as to who was present, yes.

Q. Did you examine the Gault boy that day?

A. I did.

Q. Do you recall what he had to say, then, concerning the phone call?

A. Well, it was—it was similar to his previous discussion. He said that the other boy had done most of the talking, but there was some admission again of some of the lewd statements. He—he didn't admit any of the more serious lewd statements. There was a discussion again of him admitting to Mr. Henderson that he had made calls before, and that this was a longer discussion with the lady they were talking—the boys were talking to. This was a longer discussion. I think Mr. Henderson entered into the discussion at that time and made certain statements to the boy which were not denied by the boy at the time. I can explain what those—that was, if you like.

Q. Well, Mr.—to go to something else for a minute, Mr. [fol. 80] Gault testified that he was not allowed to ask questions. Do you recall what that was about?

A. I don't remember him being denied the right to ask questions. The only two persons who told firsthand about what had happened were the two boys. The other boy, the Lewis boy, and the Gault boy.

Q. How many probation officers worked at—out of your court?

A. Two.

Mr. Haggerty: I have no further questions at this time.

Cross examination.

By Mrs. Lewis:

Q. Judge, you stated that the parents had notice of the June 9th hearing?

A. I don't believe I so stated. I stated that Mrs. Gault was there, I believe. I don't remember a direct statement that I made to the effect that she had notice. I don't believe I made that statement.

Q. Are you now saying that she was not given notice?

A. No, I am not saying that. I am just saying that—[fol. 81] you asked me if I said that she had notice, and I don't believe I said anything about it.

Q. Well, I thought you had. That is why I put it in that form. Judge, did—were the parents given notice as required by the statute, that you would hold a hearing on June 9th?

Mr. Haggerty: Objection to that. There was no testimony that there was a formal hearing on June 9th.

The Court: Objection sustained.

By Mrs. Lewis:

Q. Judge, what was the hearing that you held on June 9th? Was that the hearing?

A. I consider it a hearing, yes. The parent was there, and the boy was—a statement was made as to what it was about, and what the probable consequences were of a boy

getting into trouble; and I don't—I don't know, I don't believe that the statute requires a written notice. It's been my practice that if they do appear voluntarily for the hearing, and we proceed with it, it's a hearing.

Q. Did—strike that, please.

In the statement that you made, just previously, about the silly phone calls and the fact that Gerald admitted that [fol. 82] he did say some of the lewd words concerning sex, were these statements that were made to you in the courtroom in the presence of either or both parents?

A. Yes, it was—they were made at the first hearing, and they were made at the second hearing, made in the presence of the mother at the first hearing, and the presence of the mother and the father both at the second hearing.

Q. All right. Now, Judge, would you tell me under what section of the law or tell me under what section of—of the code you found the boy delinquent?

A. Well, there is a—I think it amounts to disturbing the peace. I can't give you the section, but I can tell you the law, that when one person uses lewd language in the presence of another person, that it can amount to—and I consider that when a person makes it over the phone, that it is considered in the presence, I might be wrong, that is one section. The other section upon which I consider the boy delinquent is Section 8-201, Subsection (d), habitually involved in immoral matters.

Q. All right. Judge, would you tell us the immoral matters in which he was involved in that that led you to [fol. 83] the decision?

A. Yes. Yes, I can tell you that. On July—let's see. On July the 2nd, 1962, there was a referral made to our office. Thought it was not—a referral was made, no follow-up was requested by the Globe Police Department, where the boy had stolen a baseball glove from another boy and lied to the Police Department about it. Also—

Q. Excuse me, was there a hearing held in your Court on this matter?

A. There was no hearing. No hearing.

Q. There was no accusation, then?

A. There was no accusation.

Q. That the boy had stolen a baseball?

The Court: Permit the Judge to give the answer to—

The Witness: No, there was an investigation, but because of lack of material foundation for the—

By Mrs. Lewis:

Q. Judge, just a minute. Before we go further, could we refer back to these section that I showed you of the criminal code, and when you spoke about this section, disorderly conduct, were you referring to 13-377, entitled "Vulgar or obscene language"? This is just for the record. [fol. 84] A. That, and Section 8-201.

Q. Right.

A. 201, Section D, where a boy is habitually engaged in immoral matters, and I consider it an immoral matter when a boy calls some—a lady up on the telephone and ask her to give him a little, and talks about the bombers, and that sort of thing. I consider that immoral in connection with Section 8-201, Section D.

Q. Right. For the record, may I read it, Judge?

A. Very well.

Q. "A child who habitually so deports himself as to injure or endanger the morals or health of himself or others."

A. Yes, that's correct.

Q. Now, is there anywhere in the record where it shows that you found the child delinquent under Section A and Section B of 8-201?

A. No, it never appears when—a child in juvenile court is not guilty of a crime. That's one of the matters that I always explain to the boys and girls that are in court. They are not charged with a crime when they come into the court. They are charged with delinquency, and it is their—my finding, that they are charged, and it amounts to [fol. 85] merely delinquent, and not that they are found guilty of a crime.

Q. Were the parents ever advised that you found the child delinquent under Section A and/or Section B of Section 8-201?

A. No, they were never so advised. They were merely advised of the—what the boy had done and admitted doing in court.

Q. All right. Judge, I interrupted you. Then would you proceed to tell us, then, the additional bases, if any, upon which you found him "habitually immoral" I think were your words?

A. Yes. On February the 2nd, 1964—

The Court: Just a moment, Judge. Aren't we going outside the issues of the case here, Mrs. Lewis?

Mrs. Lewis: Well, this is a—actually, the first time in which I am learning something about the case, Judge. This is the first time I am learning that the boy was considered habitually immoral.

The Court: But that is not the purpose of this hearing.

Mrs. Lewis: Pardon me?

The Court: That isn't the purpose of this hearing.

[fol. 86] Mrs. Lewis: You are right, Judge, but I think still, since we have gone this far, I would like to know on what else the Judge based it, or—

The Court: Do you want to go into the fact that—from the time that the boy—he has had any previous trouble, and so forth, bring it all up on the hearing to see whether or not he had a proper basis for proper background, taking into consideration what the matters were that he committed him on on June 15th? Now, if that is your purpose, you are—you are asking this Court to determine whether or not this Court was—would uphold committing this child, on the basis of the hearing held on June 15th.

Mrs. Lewis: Yes. Well, we had agreed that that would not be the issue, that that was to be before Judge McGhee, if it was to be.

The Court: If you found out—we have the facts upon which the hearing was held, the information. He was com-

mitted. You want—you are asking, in his opinion, about the law, asking the Judge. It is either—that is invading the province of this Court. If there is no law or it had no jurisdiction, you're—your petition is well taken. If there was jurisdiction, then it's not up for this court to deter-[fol. 87] mine whether or not the Court of Gila County acted with wisdom or whether or not this Court woud act the same.

Mrs. Lewis: Yes. You see, your Honor, the record of this Court shows—the only thing that it shows, and it's very deficient, is that there was a petition charging the child with delinquency, there was an order of commitment, finding him—committing him and sending him down to the Industrial School, and a Juvenile Referral Report. That's all, presumably, that is in that file. They gave me a copy of it, and I am sure they are holding nothing back. This Juvenile Referral Report charged lewd phone calls. Now, Judge McGhee said he did not base his finding on that alone, but he based it on an additional section, Section A, within which this would come under Section D.

The Court: Irrespective of what law he based it on, Mrs. Lewis—

Mrs. Lewis: Yes.

The Court: If the Court had jurisdiction to perform the very act he performed, then a habeas corpus case would not lie.

Mrs. Lewis: If, on July 2nd, 1962, the boy was—there was a report from the Police Department that he stole a [fol. 88] baseball glove, and there was no hearing on that, that does not give Judge McGhee authority to send him down under Section D, so it's the same thing, I am satisfied, as though it was written down here in the record, if Judge McGhee is adding that to his record. Now, that's why I was asking the rest of this. But I will desist, Judge. I mean, I am satisfied to ask him some more questions now about notice and warning and so on.

The Court: Mrs. Lewis, the Court is not trying to preclude you from going into it.

Mrs. Lewis: I understand.

The Court: The very factor, the law, the Court must determine in this case.

Mrs. Lewis: I understand.

The Court: But to rehash the whole matter, because to this Court I must find if there was jurisdiction, your habeas corpus would fall.

Mrs. Lewis: That's right.

The Court: If there was no jurisdiction, you must prevail.

Mrs. Lewis: Right.

All right, then, I will ask, your Honor, that the testimony of Judge McGhee, with respect to finding the child delinquent under Section D be stricken for the fact that [fol. 89] there is nothing in the record of the Juvenile Case which shows that he was found delinquent under Section D, 8-201.

The Court: You ask it be stricken?

Mrs. Lewis: Yes, your Honor.

The Court: Well, you asked the question, and that's the answers you received. Mr. Haggerty could have objected to the very question that you would ask, and the Court would have sustained the objection. Your request will be denied.

Mrs. Lewis: All right. I will assume that I have my exception. I don't know what it is for.

Q. Judge McGhee, at the hearing on June 9th, and the continuance of that hearing on June 15th—am I using the correct terms?

A. I think it would be correct.

Q. Were any adult witnesses sworn and/or heard against the boy Gerald Gault?

A. No. It was all, in my mind, done upon the admission of Gerald Gault.

Q. Did Mrs. Gault, the mother, ask you about having Mrs. Cook in court to testify?

A. I believe she did. She or Mr. Gault, one of them,

asked why, and I told them I didn't feel it was necessary. I can explain, if you like.

Q. Did your Honor at any time on June 15th or on June [fol. 90] 9th, prior to the start of the hearing, warn—or any time before that, warn of the possible consequences of sending the boy to the State Industrial School?

A. Yes. In February, I believe February 1st—or February 25th of 1964, when he was placed on probation, it was definitely explained to them. Do you want me to go further?

Q. Well, I am asking—

A. And, yes, then again on February the 9th, the matter was discussed, and—

Q. Do you mean June the 9th?

A. What did I say?

Q. February.

A. Oh, pardon me. On June the 9th, he was reminded of his previous admonition of February the 25th.

Q. As a matter of fact, on June the 9th, and I say this from the discussion with the boy and his parents, didn't you make some very fine remarks to the boy, didn't you say things to try to show that he was a manly boy and he had great possibilities? I mean, didn't you—

A. I am sure that I did. I—I told him that he—I probably at that time—I have a standard routine I go through [fol. 91] if I see that a boy has some possibilities and can change his ways. I try to point out to him that he has possibilities, what a wonderful thing the mind is and the body is, and that he has—on his side. That he could make something out of himself, if he just would, and I am sure that I went through that in detail.

Q. Could you understand that perhaps these parties felt rather good about this statement, would you gather from their attitude in some way, that they felt this was a fine thing that you had said?

Mr. Haggerty: Objection.

The Court: Objection sustained.

Mrs. Lewis: Your Honor, I think their—their state of mind at this time was pretty important.

The Court: On what theory?

Mrs. Lewis: On the theory of what happened later, of what they—what they didn't do, the fact that they didn't get counsel.

The Court: You mean, it would be an excuse because the boy did not get probation?

Mrs. Lewis: Not an excuse. In their mind—

The Court: Well, I understand on what theory you are going on, Mrs. Lewis. You are telling the Court that they [fol. 92] were deprived of counsel, or that they were promised that the boy would get probation. Now, if you will avow to the Court that that would be the evidence, I will permit you to proceed on that.

Mrs. Lewis: There was no promise made to them as such, Judge, but what their frame of mind was when Judge McGhee made this good statement about the boy, and it was a fine statement, and they were very elated; if they went out of that Court feeling that the Judge was going to give this boy another chance, I think that it's an important fact in this case.

The Court: All right, I will ask you on what fact?

Mrs. Lewis: I beg your pardon?

The Court: I won't be repetitious in what I have said before, Mrs. Lewis. On what fact would that go to the question of jurisdiction?

Mrs. Lewis: On the failure to give warning of the possibility that the boy—or the probability that the boy was going to be sent to the State Industrial School, and take him—

The Court: Why can't you ask him that directly? I will permit you to.

Mrs. Lewis: No, that isn't the testimony. Now the [fol. 93] testimony is whether or not the Judge made this very fine statement about how—what possibilities this boy had, whatever it was that he sent—

The Court: He has answered your question on that.

Mrs. Lewis: Pardon me?

The Court: He has answered your question on that, Mrs. Lewis.

Mrs. Lewis: All right.

The Court: You are asking him what frame of mind they were in when they went out of his courtroom. Is that your question?

Mrs. Lewis: From what he could observe, whether or not this had any effect.

The Court: Do you have any objection to that question?

Mr. Haggerty: I do.

Mrs. Lewis: If your Honor—

The Court: Just a moment, please. What is your objection to this?

Mr. Haggerty: How can the witness be expected to answer as to somebody else's frame of mind? It is not the witness's—

Mrs. Lewis: If your Honor please, may I read from here where it says that what the Judge says can have a great [fol. 94] effect on a boy and on his parents?

The Court: That is a philosophy of juvenile proceedings, is it not?

Mrs. Lewis: That's right, and it's a philosophy—

The Court: It doesn't go to jurisdiction.

Mrs. Lewis: It goes to jurisdiction if the parents felt by this that the Judge thought that this boy was a boy who should not be sent to Fort Grant, but should be given another opportunity for this anti-social conduct that he had been charged with, and did—when they were thrown off their guard, to prepare themselves in some way, as they have a legal right to do, for the continuance of this hearing. I—I think this is very germane, Judge.

The Court: Well, the Court will permit you to ask a question or two on that. We will save time on that. If it is germane, the Court will consider it. If it is not, the Court will disregard it.

By Mrs. Lewis:

Q. Judge McGhee, I take it that you conduct juvenile hearings in an informal matter in your Court?

[fol. 95] A. That's correct.

Q. That you do not have a Court Reporter present?

A. That's correct.

Q. Even—

A. Or usually—not usually.

Q. Even in cases where you feel that it may be necessary to take the boy from the parents' custody and place them in the State Industrial School, or some other place as the statute allows, even in those cases you don't—don't have a Court Reporter?

A. Ordinarily not.

Q. Fine. And in this case, you did not?

A. Did not, no.

Q. Right. On June 9th as you have stated, and as the boy and the parents have stated to me, if I will be permitted to, you did make a very fine statement to them which much impressed them? Did you feel that the—that the boy was recalcitrant, that he was flouting the authority of the—would flout the authority of the Court in any way, or—or do you think that he paid attention to what you said to him?

Mr. Haggerty: Objection.

The Witness: It appeared that he had not paid much [fol. 96] attention to what I said to him.

By Mrs. Lewis:

Q. You are talking now about February?

A. February, yes.

Q. Well, would you feel that on June 9th that he was paying attention to what you said to him at that time?

Mr. Haggerty: Object to this unless he knows the state of mind of the person to whom the question has been directed.

The Court: I can't see the materiality, Mrs. Lewis. What is the materiality?

Mrs. Lewis: The materiality, as I say, goes to the—I

will only repeat myself, to the frame of mind of these parties when they left, when there was a further proceeding in the matter, or continuance of the hearing.

The Court: Well, to make the record for you, Mrs. Lewis, is it by this testimony that you are trying to show that any statement made by Judge McGhee at that time was so understood by your clients that they were lulled into the fact that they needed no attorney because the boy was going to receive probation?

Mrs. Lewis: That is in part what they felt, Judge, very much so.

[fol. 97] The Court: Well, I haven't seen the predicate for any kind of testimony like that, but I will let you ask the Judge those questions directly, or I will ask the Judge the question directly, if you wish.

Mrs. Lewis: Please do so, Judge.

Examination.

By the Court:

Q. Judge, was there any time, to your knowledge, that any statement or action that you took that you felt you conveyed any impression to the petitioners here that the boy would receive probation?

A. Only that I said I would think it over. I didn't know what I was going to do. I didn't want to be hasty in the matter.

Q. But other than that—

A. Other than that, I at no time told anyone what I was going to do. I did not tell anyone what I was going to do.

Q. And this statement was made—

A. Or that I thought I might do. Well, I—I will take that—I must have just discussed something generally with the probation officer, but I at no time told them what I was going to do. I may have talked about the possibility, but I [fol. 98] am sure that I at no time told them, anyone, what I was going to do because I didn't know myself what I was

going to do, because I was not satisfied, from the testimony there at that time; and we—I felt that we should have the other boy, some information from the other boy, and go into the matter a little deeper.

By Mrs. Lewis:

Q. Did your Honor question the boy separately?

A. No, they were together when they were questioned.

Q. With respect to the continuance—the further hearing on June 15th, did your Honor make an order with respect to the appearance of the parents at the—

A. There was no minute entry made, if that's what you mean. I notified the probation officers to notify the parents to be present for an additional hearing.

Q. Did your Honor at any time—well, I think this has been asked on direct. Did your Honor at any time advise the parties that they had a right to cross examine the witnesses?

A. I don't believe I did.

Q. Did your Honor order any probation or other reports [fol. 99] on which you relied in connection with this matter, in addition to the testimony at the hearing?

A. Well, I had certain reports, and I have certain reports, previous reports, concerning the boy, which I have in the files.

Q. Are they in the—in the File No. 2379 of the—juvenile case?

A. No, they are not kept in the—the official file in the office of the Clerk of the Court. They are kept in the file of the probation officer.

Q. Were these matters on which your Honor relied in coming to a conclusion in addition to those things presented on June 8th?

Mr. Haggerty: I object to the question. To ask upon what the Court relies is objectionable, it is not proper, not subject to cross examination.

The Court: Objection sustained.

Mrs. Lewis: If your Honor please, the—if the Judge relies on something that the parents don't know about, that there isn't an opportunity to examine, such as a statement that the boy stole a baseball glove, and no charge made, I think this is very germane.

The Court: Well, we are talking about the hearing on [fol. 100] June 20th—what, June 15th?

Mrs. Lewis: On June 8th and June 15th, and the commitment is a basis of that, and it—whether the Judge relied on anything in addition to what was said in the presence of these two parents in making his decision—

Mr. Haggerty: Well, whether the parents know what he relied on or what he did not rely on, I fail to see how this has any bearing.

The Court: I will sustain the objection.

Mr. Haggerty: I and you don't always know what the Court relies on.

Mrs. Lewis: I think it has utmost importance, if there is a proper hearing, if the Judge relies on something of a file which is not in the case, about which the parents do not know anything, and they cannot in any way refute a claim that the police did not press charges, that the child stole a baseball glove.

The Court: This hearing was about the lewd phone calls that were made, Mrs. Lewis. We have the evidence surrounding the circumstances upon which this hearing was held.

Mrs. Lewis: Right.

The Court: Now, you are saying that the Judge must have more evidence than he had—

[fol. 101] Mrs. Lewis: Oh, no, I didn't.

The Court: —or that he is acting without jurisdiction—

Mrs. Lewis: Excuse me. I didn't say at this point that he should have more evidence. Now, Judge McGhee says, "I didn't send him down under Section A, I sent him down under Section A or D." I don't mean to misquote it, Judge.

The Witness: I don't believe I said quite that. I said both.

By Mrs. Lewis:

Q. Both. All right, both. I didn't mean it—

A. Probably another ground, too. I don't believe—there may be another one there that—that is applicable.

The Court: Let's assume, Mrs. Lewis, that he—that there has been a crime that is committed and he cites the improper section. Let's take for instance that he could take into consideration disturbing the peace, and he doesn't put disturbing the peace, but the evidence shows that the boy disturbed the peace. Isn't that a violation of law?

Mrs. Lewis: I think it is necessary for the parents or anyone who is being charged, or has the custody of—of [fol. 102] someone who is being charged, to be properly advised. If they are properly advised, and the section is cited as 338, when it is 337, or 388, when it's 377, but they are properly advised. Then I would say that was immaterial. But the question comes down to whether they were properly advised.

The Court: As to whether or not this boy was picked up because he is alleged to have committed certain acts, namely, lewd—namely making phone calls and using lewd terms, isn't that right? That is the charge here.

Mrs. Lewis: That's right.

The Court: And that is what the parents understood that the boy was charged with.

Mrs. Lewis: That's right. But I know they—

The Court: Now, whether he has any further background on whether this boy has done any acts previous to this, the matter that you are going into is the fact of whether or not he committed him to Fort Grant, or whether he should just give him probation. Now, that is the very point you are making to this Court.

Mrs. Lewis: The point I am making to this Court actually is that there was no proper notice to the parents.

[fol. 103] The Court: We have that here. We have the notice.

Mrs. Lewis: And that there was no—

The Court: We have the notice, Mrs. Lewis, it's in evidence. There is no dispute as to the notice.

Mrs. Lewis: Oh, yes, there is, your Honor. There was insufficient notice, if ever there was insufficient notice, the business of giving a piece of note paper like that to a parent to come into Court, and call this legal notice.

The Court: Mrs. Lewis, you misunderstood the Court. There is no disagreement as to the type of notice these people had, if any. This is a legal point to argue.

Mrs. Lewis: That's right.

The Court: But we have the evidence as to the type of notice, or—or what kind of information they had there is notice.

Mrs. Lewis: Right.

The Court: All right. There is notice given in the evidence as to whether or not—they knew they could have an attorney or not.

Mrs. Lewis: Now, there—now, the dispute as of this [fol. 104] moment is if the Judge is stating that he committed the boy and took him out of parents' custody on something additionally that goes outside the record here. The parents have a right to know if they charged the boy with a crime, and if there was a hearing on it. That's my position.

The Court: And what are those facts?

Mrs. Lewis: Well, I was just asking—

The Court: The phone calls?

Mrs. Lewis: No, I am sorry.

The Court: Whether or not he made these phone calls?

Mrs. Lewis: In addition to the phone calls, if there is anything else on which the Judge based sending the boy to Fort Grant. Those must be matters on which, if there was to be a hearing—so that the boy could be properly represented, the parents could have witnesses there to face them and go through the same thing as this.

The Court: That is what I have been saying right along, too, Mrs. Lewis. Your position here is that the—isn't a question of jurisdiction—

Mrs. Lewis: That is jurisdiction, Judge.

The Court: It is the question of the severity of the sentence that's imposed. That's your position upon the [fol. 105] facts that were presented to—

Mrs. Lewis: Oh, no, excuse me, Judge. That's jurisdiction as well because if the Judge based—

The Court: Do you have any more questions of this witness? I am going to permit you to ask any further questions that you have of this witness, and I am permitting you and Mr. Haggerty to argue the law to the Court.

By Mrs. Lewis:

Q. Did your Honor at any time apprise the parents of the exact charges against the boy, citing the sections of the law that you say he had violated?

A. No, it's not the practice to cite the sections of the law because the—the law says that you only—you do not set out in your petition the facts, merely that the boy is delinquent. That's all the law requires. If you do that and do not set out the facts—so we merely put down in the petition that he is delinquent, or that he is neglected, or whatever the occasion may be in the boy's particular case.

Q. Are the parents served with a copy of that petition which only sets out delinquency?

A. I don't believe so.

[fol. 106] Q. Did your Honor in this case make any order as referred to in Section 8-224 (a) when the jurisdiction of the juvenile judge—

The Court: Well, just ask him if he made an order on that without reading the section.

Mrs. Lewis: Right.

Q. On Section 8-224?

A. I don't have that in front of me. I don't remember the section. You are referring to the one concerning the—

Q. May I read it to him?

The Court: Well, what is the title of it?

The Witness: The parents of the boy—

By Mrs. Lewis:

Q. "Subpoena of parents or guardian; witnesses; contempt; attachment," is the title.

A. I don't believe any order was made in connection with it. It was in his file in connection with other cases. The only order was a verbal order to the probation officers to notify them of the—of the hearing.

Q. Thank you, Judge. Did your Honor at any time talk to Mrs. Cook in connection with this matter?

A. No, I did not personally talk to Mrs. Cook. I acted entirely upon the statement of the boys.

[fol. 107] Q. Was it your—your Honor's belief that the boy had committed a misdemeanor on June 8th, 1964, under Section A of 201?

Mr. Haggerty: Objection, it is immaterial.

The Court: Objection will be sustained.

Mrs. Lewis: Object to that, your Honor. The law gives me my objection.

Q. Had the boy been given probation on June 8th, 1964?

A. He was.

Q. Was the boy on probation for a misdemeanor?

A. I think the referral from the officers stated that it was a felony because—the money, in that case, may be questioned, I will put it that way. It's a question of whether it was a misdemeanor or felony, having been taken out of—money was taken out of a lady's purse at the show, and it was probably a misdemeanor, probably a misdemeanor because as I say, we don't determine that the boy has committed a felony or misdemeanor, we merely determine that he is delinquent.

Mrs. Lewis: I think that I am not to pursue what is further in that file on which the Judge based his decision.

The Court: Well, you can ask him.

[fol. 108] By Mrs. Lewis:

Q. What else did you base your decision on to take the custody of that boy from the parents?

A. You—

Mr. Haggerty: Objection.

The Witness: I will be glad to answer that question.

Mr. Haggerty: I will object as invading the province of the judiciary.

The Court: The objection will be sustained.

Mrs. Lewis: I am sorry. I have—oh, one further question.

Q. Where there is father who is responsible for the support of the child, does your Honor expect him to be in court?

Mr. Haggerty: Objection to that. It is immaterial. We are dealing with this particular case.

The Court: Sustained.

Mrs. Lewis: If your Honor please—all right, thank you.

Q. Did you consider it necessary for Paul Gault, the father, who was responsible for the support of this child, to be in court at the time of the hearing of this matter?

[fol. 109] Mr. Haggerty: I object to that as vague and immaterial.

The Court: Overruled.

The Witness: I—at the time, the father was away, and it was my impression at the time that he was generally away, that he was—he was not habitually at home, that he lived various places and worked here and there and was not generally at home. I am not sure he would know—I am not sure that I knew where he was at the time. I considered, I think that notice to one of the parents would be sufficient.

Mrs. Lewis: Thank you, I have no further questions. Thank you.

Mr. Haggerty: I have no questions.

The Court: You may step down, Judge. Watch your step when you leave the stand.

Any objection to the Judge being excused?

Mrs. Lewis: No.

The Court: You may be excused if you wish, Judge.

Call your next witness.

Mr. Haggerty: I have no further witnesses.

The Court: Any rebuttal?

Mrs. Lewis: No.

The Court: All right, I will—

[fol. 110] Mrs. Lewis: Excuse me.

The Court: I will hear from each one of you briefly.

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 112]

IN SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETITIONER'S EXHIBIT 1

Mrs. Gault:

Judge McGHEE has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency.

/s/ FLAGG

[fol. 113]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETITIONER'S EXHIBIT 2

JUVENILE REFERRAL REPORT

Name Gerald Gault Age 15 Birth Date 1-23-49
Address Globe Mobile Homes Birth Place
Date 6-8-64. Charge Lewd Phone Calls
Sex M Race W Phone 5-4181 or 5-6162
School G. H. S. Grade 9th
Works
Father Works
Mother Marjorie Works Baby Sitter
Guardian Works
Referred by S. O. Globe Arresting Officer T. Trojonavich
Parents Notified by Date Hour
√ Follow Up Requested ☐ No Follow Up Requested

—DETAILS—

Gerald says Ronnie ask (this woman today) "Are your cherries ripe?"—"Do you have big bombers"—"Do you give any?" "Do you have a big long prick?"

Court Action Case No. 2379
Handled by Probation Officer
X Placed in Detention 6-8-64 R.H.H.
X Released from Detention 6-16-64
X Petition Filed 6-9-64
X Hearing Held 6-15-64
Dismissed
X Committed to State Industrial School 6-15-64
Committed to Good Shepherd School
Placed on Probation

[Stamp—Filed at 4:00 P.M.—June 15, 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

[fol. 114]

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

PETITIONER'S EXHIBIT 3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

[Stamp—Filed at 10:00 A.M.—June 9, 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

HAVING AND EXERCISING JURISDICTION IN JUVENILE MATTERS

Petition No. 2379

IN THE MATTER OF

GERALD FRANCIS GAULT

A DELINQUENT MINOR

Your petitioner respectfully represents to this Honorable Court that he is a resident of Gila County, State of Arizona; that he is informed and believes and therefore alleges that said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; that said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare.

WHEREFORE, your petitioner prays this Honorable Court issue an order for the production of said minor, at a time and place to be named by the Court, and that upon a hearing such order may be made by the Court regarding the care and custody of said minor as to the Court may seem just and proper, and that, pending such hearing, such other orders regarding the care and custody of said minor may be made as the Court may deem necessary.

/s/ CHARLES D. FLAGG

State of Arizona,
County of Gila, *ss.*:

Charles D. Flagg, being first duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact, except as to matters therein stated upon information and belief, and as to such matters he believes them to be true.

/s/ Charles D. Flagg

Subscribed and sworn to before me this 9th day of June, 1964.

.....
Notary Public

My Commission Expires:

[fol. 115]

In the Superior Court of the State of Arizona

In and for the County of Maricopa

Petitioner's Exhibit 4

In the Superior Court of the State of Arizona

In and for the County of Gila

[Stamp—Filed at 4:00 P.M.—June 15, 1964—Arnold M. Ambos, Clerk, By H.W., Deputy]

Having and Exercising Jurisdiction in Juvenile Matters

Commitment to the State

Industrial School No. 2379

In the Matter of

Gerald Francis Gault

A Delinquent Minor

A Petition having been heretofore filed by Charles D. Flagg, Probation Officer for the County of Gila, State of

Arizona, charging the aforesaid minor with being a delinquent child within the meaning of the Statutes of the State of Arizona applicable thereto;

Now, this 15th day of June, 1964, said matter coming on regularly to be heard before the Judge of the said Superior Court of said County of Gila, in Chambers, and after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years.

And the Court finds that the said child's own good and the best interests of the State require that he be committed to the State Industrial School for the period of his minority, unless sooner discharged by due process of law.

A certified copy of this Order shall be a warrant for the Probation Officer of Gila County to deliver the said child to said Industrial School, and for the authorities of said Industrial School to receive and keep said child as herein ordered and provived.

DATED AT GLOBE, ARIZONA, this 15th day of June, 1964.

/s/ ROBERT E. McGHEE
Robert E. McGhee, Judge
Of the Superior Court

[fol. 116]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

En Banc

#164769

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus.

Appeal from the Superior Court of Maricopa County

Honorable Fred J. Hyder, Judge.

Affirmed.

Amelia D. Lewis, Phoenix, Attorney for Appellants,

Darrell F. Smith, Attorney General, By Philip M. Haggerty, Assistant Attorney General, Attorney for Appellee.

OPINION—Filed November 10, 1965

BERNSTEIN, Justice

The parents of Gerald Francis Gault appeal from an order entered by the Maricopa County Superior Court dismissing a petition for habeas corpus, discharging the writ and remanding the infant involved to the custody of the appropriate authorities in the Arizona Industrial School. Petitioners filed in this court August 3, 1964 seeking a writ of habeas corpus to secure the release of their minor son who had been committed to the Arizona Industrial School June 15, 1964.

On the same day the petition was filed, we ordered that the matter be heard by the Superior Court of Maricopa County, which hearing was held August 17, 1964. At that [fol. 117] time, the following facts were elicited. On June 8, 1964 Gerald Gault and a companion, Ronald Lewis, telephoned from the Gault house to a Mrs. C. and made ob-

[File endorsement omitted]

scene remarks to her. She reported the incident, the call was traced and the boys picked up. They were taken to the detention home and that same evening Mrs. Gault went there and spoke to Gerald who admitted the episode but, according to her testimony at the habeas corpus hearing, said Ronald used the lewd language. Probation Officer Flagg told her why Gerald was there and said there would be a court hearing the next day. Judge McGhee heard the matter in chambers in the presence of Gerald, Ronald and his father, Mrs. Gault, her elder son Louis, and Probation Officers Flagg and Henderson.

There was a conflict in the testimony at the habeas corpus hearing concerning what transpired at the juvenile hearing. Mrs. Gault testified that in response to the Judge's questions at the juvenile hearing, Gerald said he dialed Mrs. C's number, asked her if it was such and such a number, said there was a friend of his who wanted to talk to her, then handed the phone to Ronald who made the lewd remarks. Officer Flagg testified that at the juvenile hearing, Gerald admitted making the phone call and using some of the obscene language. Judge McGhee testified that Gerald admitted using some lewd words. The Judge further testified that at the conclusion of the juvenile hearing he told Mrs. Gault and Gerald he would think about the case and let them know his disposition of it. Gerald was returned to his home the 12th and on that day or the preceding day Mrs. Gault received a written note from Officer Flagg which said "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964, at 11:00 a.m. as the day and time for further hearings on Gerald's de- [fol. 118] linquency" signed "Flagg".

There was a further conflict in the evidence at the habeas corpus hearing concerning the testimony at the second juvenile hearing. Both Mr. and Mrs. Gault testified that no one accused Gerald of making a lewd telephone call and also said that Gerald admitted nothing. Both Mrs. Gault and Judge McGhee agreed that Mrs. Gault had asked him why Mrs. C. wasn't present to which he replied she didn't

have to be. But Judge McGhee said Gerald admitted making some of the lewd remarks, although not the more serious ones. The Judge also testified that he informed the Gaults at the juvenile hearing of the possible consequences if Gerald was found to be delinquent, namely, commitment. Gerald did not testify at the habeas corpus hearing.

The Gaults were not given a copy of the petition or written notice of the hearing date except for Flagg's note concerning the hearing on the 15th. But it is clear that they knew the exact nature of the alleged act of delinquency, including the name of Mrs. C., from the day Gerald was detained and they appeared at both juvenile hearings without complaint of inadequate time.

The parents claim they were not informed of a right to counsel, to subpoena witnesses, to cross examine witnesses, of the right of confrontation, to sworn testimony and to a warning of the possible consequences of a finding of delinquency. Assuming they have these rights, it appears from the record that they knew of their right to counsel, to subpoena and cross examine witnesses, of the right to confront the witnesses against Gerald and the possible consequences of a finding of delinquency. In February [fol. 119] 1964, Judge McGhee found Gerald delinquent on a different charge and informed the parents that if Gerald came before the court again and was found to be delinquent he might be committed.

The assignments of error may be grouped under three major headings: (1) that the Juvenile Code, A.R.S. §8-201 et seq., is unconstitutional because it fails to apprise parents and children of the specific charges, does not require timely, adequate and proper notice of a hearing and does not provide for an appeal, all of which is a deprivation of procedural due process of law; (2) that the juvenile court in fact denied petitioners due process of law by failing to provide proper notice of the charge and the hearing, failing to notify them of certain constitutional rights, by relying upon unsworn hearsay testimony, by failing to make a record and by removing custody of Gerald from

his parents without a showing of their incompetency or inability to properly care for him, and finally, (3) a group of miscellaneous error dealing with the habeas corpus hearing in Maricopa County and the original detention of Gerald.

The parents contend our juvenile code is unconstitutional because it fails to provide for adequate notice of the alleged act of delinquency and fails to provide for proper notice of a juvenile hearing sufficiently in advance to enable the parents and child to decide whether to admit or contest the allegations. It is also argued that the statute is invalid because it does not provide for an appeal procedure. All of these omissions are said to violate procedural due process of law contrary to our state and federal constitutions. U.S. Const. Amendment 14, §1; Arizona Const. Art. 2, §4.

[fol. 120] We first consider petitioners' complaint that the juvenile code does not provide for an appeal. The question was decided adversely to them in Ginn v. Superior Court, in and for County of Pima, —— Ariz. Ap. ——, 404 P.2d 721. We agree with the scholarly opinion of our appellate tribunal and hold that there is no right of appeal from a juvenile court order, nor does the general appeal statute apply, §12-2101 A.R.S.; 404 P.2d at 724. We note that our Constitution gives to the superior court *exclusive original jurisdiction in all proceedings and matters affecting delinquent children,* Article 6, §15.

Section 8-201(6) defines a delinquent child as one who has violated a law, regulation or ordinance; is uncontrolled by his parent because incorrigible, wayward or habitually disobedient; habitually truant from school or home or habitually deports himself so as to injure or endanger the morals or health of himself or others. Section 8-222 provides that the powers of the court may be exercised upon the filing of a petition alleging that the child is delinquent but not the facts upon which the allegation is based. The court may order that a petition be filed if, after a preliminary inquiry, it determines that formal jurisdiction over the child should be acquired. Once jurisdiction at-

taches the court may compel the production of the child and the attendance of the parents or guardian, Section 8-224. This provision makes it clear that the parent or guardian must be notified of the hearing by personal service if practical. The hearing must be held informally in chambers, Const. Art. 6, §15; §8-229, and the judge "shall make such order for the commitment, custody and care of the child as the child's welfare and the interests of the state require", §8-231. Once acquired, the jurisdiction of [fol. 121] the court over the child continues until he is 21 years of age unless sooner discharged, §8-236. An adjudication by the court upon the status of the child shall not impose any civil disability, nor shall the child be deemed a criminal. Moreover, the adjudication is not a conviction and evidence given in the juvenile court is inadmissible in any other court, §8-228. Unless the child is convicted of an offense in the interim, the court must destroy its records 2 years after the termination of probation or discharge from an institution, §8-238.

We approach this challenge to the juvenile code aware of our duty to give to the language of all statutes a meaning that will render them constitutional if this can reasonably be done. State v. Locks, 91 Ariz. 394, 372 P.2d 724. We will not declare a legislative act unconstitutional unless satisfied beyond a reasonable doubt of its invalidity. State Board of Technical Registration v. McDaniel, 84 Ariz. 223, 326 P.2d 348. In short, our duty is to reconcile the language of a statute with the constitutional provisions if possible. Roberts v. Spray, 71 Ariz. 60, 223 P.2d 808. Although the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law, Art. 2, §4, is not expressly implemented in the juvenile code, we have held a statute valid in other situations though we had to imply into the language a necessary element of the problem. In State v. Krug, 96 Ariz. 225, 393 P.2d 916 we held constitutional the "perjury by contradictory statements" statute, §13-562, A.R.S. though it failed to expressly use the word "willfully", a necessary

element of the offense. We said the element was implicit in the statute. Similarly, our constitution guarantees due process of law and the specific implementation of that [fol. 122] concept impliedly exists in the juvenile code. We have held that any statutory provision for a hearing means a hearing in a substantial sense meeting the requirements of due process. State v. Essman —— Ariz. ——, 403 P.2d 540; McGee v. Arizona State Board of Pardons and Paroles, 92 Ariz. 317, 376 P.2d 779; Forman v. Creighton School District No. 14, 87 Ariz. 329, 351 P.2d 165. The problem is ascertaining the particular elements which constitute due process in a juvenile hearing.

All jurisdictions have juvenile codes and all provide for less than the full set of due process guarantees available in a criminal proceeding. Yet, the overwhelming majority of courts have expressly or impliedly recognized the statutes to be constitutional. Harris v. State, 24 Ala.App. 59, 129 So. 795; Ex parte Daedler, 194 Cal. 320, 228 P. 467; Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892; Egoff v. Board of Childrens' Guardians, 170 Ind. 238, 84 N.E. 151; Farnham v. Pierce, 141 Mass. 208, 6 N.E. 830; Mill v. Brown, 31 Utah 473, 88 P. 609; In re Lewis, 51 Wash. 2d 193, 316 P.2d 907. For a compilation of early decisions upholding constitutionality of juvenile statutes and denying that restraint of infants pursuant to juvenile hearings impairs their constitutional rights see 18 L.R.A. (N.S.) 886.

We are aware of the tide of criticism inundating juvenile proceedings. The major complaint deals with the informal, non-adversary procedure for determining delinquency rather than the treatment rendered after a finding of delinquency. On the other hand, juvenile courts do not exist to punish children for their transgressions against society. The juvenile court stands in the position of a protecting parent rather than a prosecutor. It is an effort to substitute protection and guidance for punishment, to with- [fol. 123] draw the child from criminal jurisdiction and use social sciences regarding the study of human behaviour

which permit flexibilities within the procedures. The aim of the court is to provide individualized justice for children. Whatever the formulation, the purpose is to provide authoritative treatment for those who are no longer responding to the normal restraints the child should receive at the hands of his parents. The delinquent is the child of, rather than the enemy of society and their interests coincide. This is the basis for the general rejection of the criminal law adversary proceeding. Generally, see Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis. L.R. pp. 7-12; Paulsen, The Juvenile Court and the whole of the law, 11 Wayne L.R. 597; Molloy, Juvenile Court—A Labyrinth of confusion for the lawyer, 4 Ariz. L.R. 1,5. We have stated that the purpose of our juvenile statute is to redirect and rehabilitate the child. State v. Shaw, 93 Ariz. 40, 378 P.2d 487. Of course, the parents' right of custody is natural and legal. The court should not remove a child from its parents except for the gravest of reasons. The informality referred to in A.R.S. §8-229 merely authorizes the court to disregard technical matters of procedure not affecting the fundamental right to due process of law. Arizona State Dept. of Public Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298.

The conceptual basis for the juvenile code is the parens patriae doctrine where the state acts in loco parentis to the child. However, the Montana Supreme Court has said and we agree that:

> "This court does not wish to permit the parens patriae doctrine to prevent a fair hearing. The parens patriae [fol. 124] doctrine is intended to benefit and protect both juvenile delinquents and the public, but the doctrine cannot serve as justification for illegal detention no matter how labelled." State v. Johnson, 141 Mont. 1, 374 P.2d 504, 506.

Good intentions do not justify depriving a child of due process of law. "Otherwise, all that is necessary to justify a despotism is to make sure it intends to be benevolent." Waite, How Far Can Court Procedure Be Socialized With-

out Impairing Individual Rights, 12 J.Crim.L. & C. 339, 341. Fairness is not inimical to the proper treatment of juveniles. Justice is as good for them as it is for adults.

Those who criticize the juvenile statutes object to the great power of the judge. But that power is necessary to achieve the individualized consideration of the child which is as valid an objective today as it was 60 years ago when the juvenile court movement began. Dean Pound, speaking of family court procedures, said:

> "Instead of being wholly contentious the proceeding in the family court division should be investigatory—directed to determining the best disposition or adjustment of the family situation as a whole and seeking a complete disposition thereof. It may involve contentious trial of certain issues of fact. But the proceeding as a whole should not be primarily and characteristically contentious." Pound, The Place of the Family Court in the Judicial System, 10 Crim. & Del. 532, 542.

At the 1960 UN Seminar on human rights and the criminal law it was agreed that in all its functions, retributive, deterrent, reformative and educative—it was possible for the criminal law to be defined and applied so as to conflict with human rights. Any one of these purposes carried to the extreme could lead to serious and unjustified infringements of human rights. Morris & Howard, Studies in [fol. 125] Criminal Law 157 (64). The point is that the law, juvenile or otherwise, is no better than its administrators. Of course, it is legitimately argued that properly worded statutes decreases the opportunity for less able administrators to prejudice our citizens. In 1961 California adopted a juvenile code which attempts to provide a practical balance between civil due process for the infant and the informal court atmosphere which minimizes the harmful effects of the proceeding and encourages the minor's receptivity to treatment. In re Mikkelsen, 226 C.A.2d 467, 38 Cal. Rptr. 106. Our task is to determine the procedural due process elements to which an infant and his parents are entitled in a juvenile hearing and decide whether our

statute may be construed to include them. Then we must decide whether petitioners and their son were deprived of those rights to their prejudice.

The parent or guardian must be notified of the hearing, and anyone who rights may be affected by the court's determination must be notified, In re Mendevil, 21 Ariz. 586, 193 P. 17 and In re Johnson, 86 Ariz. 297, 345 P.2d 423, and such notice must be given a reasonable time prior to the hearing. Moreover, the child and parent must be informed of the alleged act of delinquency before an adjudication of delinquency is made.

This brings us to petitioners' second assignment of error alleging that the juvenile court, in fact, denied them and Gerald procedural due process of law because of the informal manner in which the hearing was conducted.

The conflict between the legal profession's inculcated traditional due process guarantees and the sociologist's concept of proper treatment for the juvenile delinquent has [fol. 126] understandably created divergent decisions by appellate courts. Many cases have generally held that the full array of criminal procedural safeguards are not required in juvenile proceedings. People v. Dotson, 46 Cal. 2d 891, 299 P.2d 875; People ex rel Weber v. Fifield, 136 Cal.App.2d 741, 289 P.2d 303; Akers v. State, 114 Ind.App. 195, 51 N.E.2d 91; People v. Lewis, 260 N.Y. 171, 183 N.E. 353; In re Holmes, 379 Pa. 599, 109 A.2d 523. But the decisions are in conflict concerning particular procedural safeguards. It has been held that a general allegation of delinquency, without stating the facts supporting the allegation, is a sufficiently definite accusation. In re Bentley, 246 Wis. 69, 16 N.W.2d 390; In re Duncan, 62 Ohio L. Abs. 173, 107 N.E.2d 256. That is the requirement of our statute, A.R.S. §8-222. Other jurisdictions have decided that due process requires more detailed notice. Wheeler v. Shoemake, 213 Miss. 374, 57 So.2d 267. As we said above, the juvenile and his parents or guardian are undoubtedly entitled to know the facts upon which the allegation of delinquency is based. On the other hand, we have held that the policy of the juvenile law is to hide youthful errors from the

full gaze of the public and bury them in the graveyard of the forgotten past. State v. Guerrero, 58 Ariz. 421, 120 P.2d 798. We think the proper balance between the infant's right to know the facts of the charge against him and the state's interest in avoiding or erasing the stigma of delinquency is best struck by the following rule: the infant and his parent or guardian will receive a petition only reciting a conclusion of delinquency. But no later than the initial hearing by the judge, they must be advised of the facts involved in the case. If the charges are denied, they must [fol. 127] be given a reasonable period of time to prepare.

Some courts have held that the infant is not entitled as of right to the appointment of counsel or to be represented. In re Holmes, supra; Akers v. State, supra; People v. Dotson, supra; People ex rel Weber v. Fifield, supra. But other courts have held otherwise. Exparte State ex rel Echols, 245 Ala. 353, 17 So.2d 449; In re Contreras, 109 Cal.Ap.2d 787, 241 P.2d 631; see Cal. Welfare & Inst'ns Code §§500-914; N.Y. Family Court Act §§249, 741. There is disagreement as to whether the court must advise the infant that he has a right to counsel. Some courts say no, Robinson v. State, Tex. Civ. App., 204 S.W. 2d 981, and others say yes. Shioutakon v. District of Columbia, 236 F.2d 666. We have held that the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. State Dept. of Public Welfare v. Barlow, supra. But a child has different rights and disabilities. State v. Shaw, supra. Section 8-221 A.R.S. provides that when a police officer arrests a child he must immediately notify a probation officer and make such disposition of the child as the probation officer directs. Section 8-204C (1) A.R.S. states that the probation officer shall look after the interests of neglected, delinquent and dependent children. Paragraph 3 of subsection C requires him to be present in court when cases are heard concerning children and represent their interests. Of course, the juvenile court always has discretion to allow representation. Many times an attorney may be helpful to the court, particularly where he has the confidence of parents and child and understands the seri-

ousness of the hearing. But we do not think due process requires that an infant have a right to counsel. The parent [fol. 128] and the probation officer may be relied upon to protect the infant's interests. If, however, the court discerns any conflict between the parent and child, it has discretion to select an attorney to represent the infant.

Courts have held that the infant does not have a privilege against self-incrimination or a right to be advised of the privilege, In re Santillanes, 47 N.M. 140, 138 P.2d 503; In re Holmes, supra, but the contrary has been held. Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269. We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.

It has been held that the infant has no right to confront the witnesses against him. Cinque v. Boyd, 99 Conn. 70, 121 A. 678; In re Holmes, supra. We think the relevancy of confrontation only arises where the charges are denied.

Some courts have felt obliged to apply the usual rules of evidence when deciding whether the infant committed the alleged act of delinquency, In re Contreras, supra; People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584, including the necessity of sworn testimony, In re Mantell, 157 Neb. 900, 62 N.W.2d 308, and the exclusion of hearsay, In re Green, 123 Ind.App. 81, 108 N.E.2d 647; State v. Freeman, 81 Mont. 132, 262 P. 168. But other courts have held the admissibility of hearsay proper, Campbell v. Siegler, 10 N.J. Misc. 987, 162 A. 154; In re Bentley, 246 Wis. 69, 16 N.W.2d 390, and sworn testimony unnecessary, State v. Christensen, 119 Utah 361, 227 P.2d 760. We think the sounder rule allows the judge to consider hearsay though the hearing is contested, but sworn testimony must be required of all witnesses including police officers, probation [fol. 129] officers and others who are part of or officially related to the juvenile court structure. But the hearsay upon which the judge can rely must be of a kind on which reasonable men are accustomed to rely in serious affairs. Reynolds Metals Co. v. Industrial Commission, 98 Ariz. 97, 402 P.2d 414.

The applicable burden of proof varies from a mere preponderance as in a civil case, State ex rel Berry v. Superior Court, 139 Wash. 1, 245 P. 409, to proof beyond a reasonable doubt, Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444.

A juvenile court proceeding is not a criminal case. It is a proceeding affecting children and concerns the need for some disposition to be made of a child whose welfare in relation to society is seriously involved. It may arise out of dependency, neglect or delinquency. Ariz. Const. Art. 6, §15. The delinquency may or may not involve commission of a crime by the child. The juvenile court may either suspend or refuse to suspend criminal prosecution when a child is accused of committing a crime. If it suspends criminal prosecution and retains jurisdiction, the juvenile court determines whether the child has committed a crime, not for the purpose of finding the child guilty or not guilty, but for the purpose of determining that the child has committed an act of delinquency. Acknowledging the non-criminal nature of the proceeding, yet mindful of the fact that a parent may be deprived of his child and the child of his liberty, we think the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act.

Petitioners complain that no transcript of either juvenile hearing was prepared and the record of the court did not contain findings of fact upon which the conclusion of [fol. 130] delinquency was based. They argue that an intelligent appeal cannot be taken without a complete transcript and record. The purpose of a transcript, in some instances, is to support an appeal. But there is no right to an appeal. Furthermore, the evidence adduced at a juvenile hearing is of a confidential nature because it is inadmissible in other courts, A.R.S. §8-228, and the record must be destroyed after a prescribed period of time, A.R.S. §8-238. We think the juvenile court has discretion to order or deny the taking of a transcript.

Applying all of the above requirements to the hearing under review, we find that petitioners were not denied due process of law. Mrs. Gault knew the exact nature of the

charge against Gerald from the day he was taken to the detention home. She and Gerald appeared at the first hearing without objection. Mr. and Mrs. Gault, together with Gerald, appeared at the second hearing before Judge McGhee without objection. Petitioners knew they could have retained counsel, called witnesses and cross examined Probation Officer Flagg.

Petitioners complain that the judge failed to advise them and Gerald of the possible consequences of a finding of delinquency. We know of no such rule. Nor does the concept of a fair hearing suggest a need for the rule. In any event, the record indicates that petitioners were advised by Judge McGhee in February 1964 when Gerald was found delinquent on another charge that if he came before the court again he might be committed.

Petitioners claim there was insufficient evidence to support a finding of delinquency. We note that the juvenile court had acquired jurisdiction over Gerald in February, [fol. 131] 1964 when Judge McGhee placed him on six months probation. Section 8-236 A.R.S. states that once jurisdiction is acquired it continues until the child is 21 years of age unless sooner discharged. The six month probation period had not terminated when Gerald came before Judge McGhee in June 1964. Therefore, the Judge could have committed Gerald without any further showing of delinquency if he decided Gerald's welfare and the interests of the state so required, A.R.S. §8-231. In any event, at the habeas corpus hearing Judge McGhee testified he found that Gerald violated A.R.S. §13-377, the vulgar or obscene language statute, A.R.S. §8-201-6(a) which states that a violation of the law is delinquency and (d) defining a delinquent as one who habitually deports himself so as to endanger his morals or health. There is substantial evidence in the record to support the finding that Gerald was a delinquent child.

Petitioners contend the juvenile court erred in removing Gerald from their custody upon the single ground that he was delinquent. They argue we establish a rule which would require, in addition to a finding of delinquency, a finding of the parents' unfitness to retain custody before they could be

deprived thereof. We cannot agree. We emphasize the fact that the child's welfare is the primary consideration before the juvenile court and the judge will make such order as the child's welfare and the interests of the state require. It is apparent that the best interest of a child and the fitness of his parent are not necessarily inter-dependent. In State v. Christensen, 119 Utah 361, 227 P.2d 760, the court quoted from an earlier decision where it said:

> [fol. 132] " 'It may well be that parents are generally fit to have the custody of their children, and yet they may be unable to prevent one or more of their children from committing acts of delinquency . . . In such case the juvenile court may commit such juvenile to the industrial school when the best interests of the juvenile or the protection of society demand such commitment.' " 227 P.2d at 762.

Other recent cases which hold that the juvenile court may commit a delinquent child without first deciding the unfitness of the parents are State v. Johnson, supra, and Spangler v. Breashears, Tex.Civ.Ap. 359 S.W.2d 206.

Petitioners claim the infant was unlawfully arrested and detained because A.R.S. §13-1403 allows arrest for a misdemeanor without first obtaining a warrant only if it is committed in the presence of the officer. The arrest must be made immediately or on fresh pursuit. The general law of arrest is usually held to be inapplicable in juvenile proceedings. State v. Freeman, supra; Mill v. Brown, supra; Lindsay v. Lindsay, supra; Wheeler v. Shoemake, supra. Furthermore, A.R.S. §8-221 provides the procedure for arrest of a child. It states that a police officer shall forthwith notify the probation officer upon arresting a child and shall make such disposition of the child as the probation officer directs, State v. Shaw, supra. The article also states that this "shall not be construed to prohibit a peace officer from taking into custody a child who is found violating a law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken."

[fol. 133] Petitioners' other assignments of error deal with rulings by the court during the habeas corpus hearing. They complain that the cross examination of Judge McGhee was improperly restricted. They also contend there was insufficient evidence to support the conclusion of the legality of Gerald's detention. We have considered these assignments and find them to be without merit.

The order of the Maricopa County Superior Court is in all respects affirmed.

Charles C. Bernstein, Justice

CONCURRING:

Lorna E. Lockwood, Chief Justice
Fred C. Struckmeyer, Jr., Vice Chief Justice
Jesse A. Udall, Justice
Ernest W. McFarland, Justice

[fol. 134]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

To the Honorable the Superior Court of the State of Arizona in and for the County of Maricopa.

[Stamp—Robert E. Miller—Filed—Clerk—Deputy Beulah Lowe—1965—Dec. 27—AM 8:28]

Greeting:

Whereas, lately in the Superior Court of the State of Arizona in and for the County of Maricopa, before you in a cause between

CAUSE No. 164769

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus,

said Superior Court on the 17th day of August, 1964, entered the following Order:

"It is ordered, adjudged and decreed that the petition be dismissed and the Writ discharged and that Gerald Francis Gault be remanded to the custody of the respondent."

[fol. 135] as by the inspection of the record of the said Superior Court, which was brought into the Supreme Court of the State of Arizona by virtue of an appeal by petitioners agreeably to the law in such case made and provided fully and at large appears.

[fol. 136] And Whereas, in July, in the year of our Lord one thousand nine hundred and sixty-five, the said cause came on to be heard before the said Supreme Court, and was submitted for decision after argument of counsel.

On Consideration Whereof, it was on the tenth day of November in the year of our Lord one thousand nine hundred and sixty-five, ordered by this Court that the judgment of the said Superior Court in this cause, appealed from be, and the same is hereby affirmed.

[fol. 137] You therefore are hereby commanded that such proceedings be had in said cause, as according to the decision and order of this Court, and as according to right and justice, and to law, ought to be had.

Witness, the Honorable Lorna E. Lockwood, Chief Justice of the Supreme Court of the State of Arizona, the sixteenth day of December, in the year of our Lord one thousand nine hundred and sixty-five.

Sylvia Hawkinson, Clerk of the Supreme Court of the State of Arizona.

[fol. 138]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

PHOENIX

No. 8549

In the Matter of the Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus.

The following action was taken by the Supreme Court of the State of Arizona on December 14, 1965, in regard to the above-entitled cause:

"ORDER: APPELLANT'S MOTION FOR REHEARING—DENIED."—
December 14, 1965

Sylvia Hawkinson, Clerk, By L. Brooks, Assistant Clerk.

To—

Amelia D. Lewis, P.O. Box 370, Sun City, Arizona.

Darrell F. Smith, Attorney General, Capitol Building, Phoenix, Arizona.

[fol. 139]

SUPREME COURT OF THE STATE OF ARIZONA

No. 8549

[Title omitted]

NOTICE OF APPEAL—Filed February 4, 1966

A.

Paul A. Gault and Marjorie Gault, petitioners in the within proceeding for a writ of habeas corpus, hereby appeal from the judgment of the Supreme Court of the State of Arizona in this proceeding, entered November 12, 1965, which declared valid the Juvenile Code of the State of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, and affirmed the order of the Superior Court of Maricopa County, dated August 17, 1964, which court, having been designated by this Court to hear and take testimony on the habeas corpus application, denied the writ.

Petitioner's motion for rehearing of this matter was denied December 16, 1965.

B.

It is requested that all of the records be certified by this Court to the United States Supreme Court.

C.

The questions presented by this appeal are as follows:

(1) Whether the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, violates the Four-
[fol. 140] teenth Amendment to the United States Constitution, on its face, or as construed and applied in this case, so that petitioners, parents of a juvenile committed as a delinquent for the period of his minority, are deprived of

[File endorsement omitted].

the custody of their child by a commitment proceeding which

a) did not provide a due, timely, adequate, or proper notice of either the hearing or the charges;

b) did not advise the parents and child of their right to counsel;

c) did not advise the parents and their child of their right to call and subpoena witnesses, their right to confrontation and cross-examination or their right to testimony under oath;

d) did not advise the parents and their child of the penalties attaching to a finding of delinquency;

e) did not advise the parents and their child of their right to the privilege against self-incrimination;

f) relied on hearsay evidence in support of the finding of delinquency;

g) did not provide for findings of fact by the court;

h) did not apprise the parents of the information in the probation file on which the juvenile court relied in finding the child a delinquent;

i) did not provide for a record of the proceedings;

j) did not provide for review by appeal;

k) did not provide for an investigation of the home and other related conditions in order to decide whether [fol. 141] the parents were in fact capable of properly looking after their child who was charged only with a minor violation of the law;

l) allowed the sheriff's office to remove the child from his home without a warrant on the basis of a complaint of a misdemeanor not committed in the arresting officer's presence;

m) was devoid of any evidence that the child was a delinquent.

2) Whether the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, on its face or as construed and applied, violated the due process clause of the Fourteenth Amendment and the constitutionally guaranteed right to privacy, by allowing the petitioners to be deprived of the custody of their child for the period of his minority in the circumstances of this case.

Dated, February 4th, 1966.

Amelia D. Lewis, Attorney for Petitioners, Post Office Box 370, Sun City, Arizona, 85351.

Acknowledgment of Service (omitted in printing).

[fol. 142] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 144]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

No. 8949

In the Matter of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a minor, for a Writ of Habeas Corpus.

STIPULATION TO ENLARGE TIME FOR FILING AND APPROVAL THEREOF—March 21, 1966

It Is Hereby Stipulated by the attorneys hereto that the time for appellant to file the jurisdictional statement in the Supreme Court of the United States be enlarged which shall include the time for appellant to docket this cause in the Supreme Court of the United States to and including the 5th day of May, 1966, which is thirty days beyond the

[File endorsement omitted]

sixty day period for docketing under Rule 13 of the Rules of the Supreme Court of the United States.

Dated, March 21, 1966.

Amelia D. Lewis, Attorney for Appellants;
Attorney General of the State of Arizona, By Frank A. Parks.

Be It So Ordered, this 21st day of March, 1966.

Fred C. Struckmeyer, Jr., Chief Justice of the Supreme Court of Arizona.

[fol. 145] Triple Certificate to foregoing paper (omitted in printing).

[fol. 147]

SUPREME COURT OF THE UNITED STATES

No. 1273, October Term, 1965

In the matter of the application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a minor, Appellants.

Appeal from the Supreme Court of the State of Arizona

ORDER NOTING PROBABLE JURISDICTION—June 20, 1966

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

MAY 2 1966

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 116

In the Matter of the Application

—of—

PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor.

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. .....

In the Matter of the Application

—of—

PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor.

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Arizona, entered on November 10, 1965, affirming the dismissal of a writ of habeas corpus by the Superior Court of Maricopa County and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinions Below

The opinion of the Supreme Court of Arizona is reported at 99 Ariz. 181, 407 P. 2d 760, and is set out *infra* at pp. 25-42. The Superior Court of Maricopa County, Arizona, from which appeal was taken wrote no opinion, but its oral decision, appearing in a minute entry made by the Clerk of Division 8 of that Court, is set out at p. 43, *infra*. The Juvenile Court of Gila County wrote no opinion; its decision is found in the order of commitment, dated June 15,

1964, contained in the Record as Exhibit 4 and set out at pp. 48-49, *infra*.

Jurisdiction

(i) Appellants filed a petition for a writ of habeas corpus[1] in the Supreme Court of Arizona on August 3, 1964, pursuant to the provisions of Chapter 8 of the Criminal Code of the Arizona Revised Statutes (1956), being sections 13-2001–2027. The purpose of the petition was to secure the release of appellants' fifteen year old son who had been committed as a juvenile delinquent to the State Industrial School on June 15, 1964, by the Juvenile Court of Gila County, Arizona. The same day, the Supreme Court of Arizona ordered a hearing of the application in the Superior Court of Maricopa County. The hearing was held on August 17, 1964. The Superior Court dismissed the petition, discharged the writ, and remanded the juvenile to the State Industrial School.

(ii) The order of the Superior Court was affirmed on appeal by the Supreme Court of Arizona on November 10, 1965, and a timely application for rehearing was denied by that Court on December 16, 1965. Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Arizona on February 4, 1966. On March 21, 1966, Hon. Fred. C. Struckmeyer, Chief Justice of the Supreme Court of Arizona, enlarged appellants' time to file this Jurisdictional Statement and to docket the appeal to and including May 5, 1966.

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[1] The petition and other documents referred to in this section are part of the record on appeal docketed with the Clerk of this Court. Each document is separately paginated.

(iii) The jurisdiction of this Court to review by appeal the judgment of the Supreme Court of Arizona is conferred by 28 U. S. C. §1257(2).

(iv) Cases which sustain the jurisdiction of this Court are: *Pierce* v. *Society of Sisters,* 268 U. S. 510 (1925); *Fields* v. *Fairfield,* 375 U. S. 248 (1963); *Griswold* v. *Connecticut,* 381 U. S. 479 (1965).

Question Presented

Whether the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, on its face or as construed and applied, is invalid under the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it authorizes a juvenile to be taken from the custody of his parents and to be committed to a state institution by a judicial proceeding which confers unlimited discretion upon the Juvenile Court and dispenses with the following procedural safeguards required by due process of law:

1. right to notice of the charges of delinquency;
2. right to counsel;
3. right to confrontation and cross-examination of adverse witnesses;
4. privilege against self-incrimination;
5. right to a transcript of the proceedings; and
6. right to appellate review of the juvenile court's decision.

Statutes Involved

The Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, is set forth in full at pp. 50-63, *infra*.

Statement of the Case

I. When and How the Federal Questions Were Raised and Decided Below.

In their petition for a writ of habeas corpus and in the course of the hearing before the Superior Court of Arizona in Maricopa County, appellants raised the claim that their son was illegally detained in the State Industrial School as the result of a juvenile proceeding which violated due process of law because of the denial of the right to effective notice of the charges, to sworn testimony, to confrontation of witnesses and the right to counsel. Without opinion the court denied the writ of habeas corpus and upheld the commitment of the minor.

The claim that the Juvenile Code of Arizona, on its face and as applied in this case, violates the due process clause of the Fourteenth Amendment was raised by assignment of error in the Supreme Court of Arizona.[2] The Supreme

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[2] "The assignments of error may be grouped under three major headings:

(1) That the Juvenile Code, A. R. S. §8-201 et seq., is unconstitutional because it fails to apprise parents and children of the specific charges, does not require timely, adequate and proper notice of a hearing and does not provide for an appeal, all of which is a deprivation of procedural due process of law; (2) That the juvenile court in fact denied petitioners due process of law by failing to provide proper notice of the

Court of Arizona considered and rejected on the merits the claimed constitutional violations.

II. Facts.[3]

Appellants are the parents of fifteen year old Gerald Francis Gault who was committed as a juvenile delinquent to the State Industrial School in Arizona after a juvenile proceeding in the Superior Court of Gila County, Globe, Arizona, on June 15, 1964. No transcript exists of the hearing before the juvenile court.[4]

On June 8, 1964, Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County as the result of a complaint by one Mrs. Cook, a neighbor of the boys, about lewd telephone calls made to her. Gerald was at this time on six months' probation following an incident in February, 1964 (T. 6). Probation officers Flagg and Henderson decided to detain the children (T. 62). Mr. Flagg interrogated Gerald at some

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charge and the hearing, failing to notify them of certain constitutional rights, by relying on unsworn hearsay testimony, by failing to make a record and by removing custody of Gerald from his parents without a showing of their incompetency or inability to properly care for him, and finally, (3) a group of miscellaneous errors dealing with the habeas corpus hearing in Maricopa County and the original detention of Gerald." 407 P. 2d at 763-764; appendix, *infra*, p. 28.

[3] The statement of facts is based on the transcript of the habeas corpus hearing which was held on August 17, 1964 in the Superior Court of Maricopa County after a petition for a writ of habeas corpus had been filed by appellants on August 3, 1964 in the Supreme Court of Arizona to secure the release of the child. The symbol "T" refers to that transcript, which is part of the record on appeal.

[4] The Arizona statute does not require a record to be made of juvenile hearings but only of the age, place of birth and name of the child and his parents. (§8-229).

length during the evening of June 8th and the morning of June 9th (T. 62).

No notice about the detention or charges was left at the Gault home. Mrs. Gault, who returned from work at 6:00 P.M., was informed by neighbors about the detention and went to the detention home. There she was told by probation officer Flagg why Gerald was detained and that a hearing would be held at 3 o'clock the following day, June 9th. No written notice of the hearing or of the charges was given to Mrs. Gault (T. 31).

A petition charging Gerald with juvenile delinquency was filed by probation officer Flagg with the Court on June 9, 1964, but Mrs. Gault had not received notice of it and did not see it until August 17, when the habeas corpus hearing was held (T. 37). A referral report charging Gerald with making "lewd phone calls" made by the Probation Department, filed on June 15, 1964, was also not brought to appellants' notice until August 17th, when introduced by appellants' attorney together with the above mentioned petition (T. 38).

On June 9th a hearing took place in the Juvenile Judge's chambers in the presence of Gerald, his mother, his older brother Louis, and Mr. Flagg and Mr. Henderson, the probation officers. Mr. Gault, Gerald's father, was in Grand Canyon at work (T. 16). No one was sworn at this hearing (T. 32). No transcript was made (T. 71). No one accused Gerald of any crime (T. 33) nor was any report made by either probation officer to the judge in the mother's presence (T. 33).

Gerald testified at the June 9th hearing about the telephone call. There was a conflict at the habeas corpus hearing about this testimony. Mrs. Gault testified that Gerald

said he only dialed Mrs. Cook's number and his friend talked to Mrs. Cook (T. 32), while Judge McGhee, the Juvenile Judge (T. 79), and Probation Officer Flagg (T. 59) testified that Gerald admitted having said some of the lewd words but not the more serious ones (T. 79). At the conclusion of the hearing, in answer to a question by Gerald or his mother if Gerald would be sent to Fort Grant,[5] Judge McGhee said: "No, I will think it over" (T. 34, 47). Gerald stayed in the detention home until June 12th when he was released to his parents. At 5. o'clock that day, Mrs. Gault received a written note[6] signed by Officer Flagg which said: "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964 at 11:00 A.M. as the day and time for further hearings on Gerald's delinquency." (Exhibit 1, *infra*, p. 44).

At the hearing on June 15th, both appellants were present, Mr. Gault having returned home on June 12th (T. 18-19). Others present at this hearing before Judge McGhee were Ronald Lewis with his father, and probation officer Flagg.

Mrs. Cook, the person who had complained about the phone call, was not present or called as a witness. Probation officer Flagg had only talked to her over the phone on June 9th (T. 62) and Judge McGhee had not spoken to her at all (T. 106). When Mrs. Gault asked the judge during this hearing why Mrs. Cook was not present, and said that "she wanted Mrs. Cook present so she could see which boy had done the talking, the dirty talking over the phone," (T. 42), Judge McGhee answered "she didn't have to be present at that hearing" (T. 42).

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[5] The State Industrial School.

[6] There was a conflict in the testimony as to when Gerald was released and when Mrs. Gault received this note. Probation officer Flagg, without having made a record about these events, testified that both occurred on Thursday, June 11th.

There is similar conflict about Gerald's testimony at this second hearing as exists about the first hearing. Appellants (T. 41) and Mr. Flagg (T. 56) stated that Gerald did not admit having made any lewd remarks and only dialed the number while Judge McGhee testified that Gerald again admitted having made some of the obscene remarks but not the more serious ones (T. 82). There was no other evidence about Gerald's use of lewd language. Probation officer Flagg testified that Gerald had never admitted to him that he used any indecent language over the telephone (T. 65). Nevertheless in the referral report by the probation department (Exhibit 2, *infra*, p. 45) the charge against Gerald on June 8, 1964 was "lewd phone calls."

The June 9th petition filed by Mr. Flagg with the Superior Court, Gila County (Exhibit 3, *infra*, p. 46) alleged that Gerald Gault was "a delinquent minor." Probation officer Flagg based this charge on the fact that "the phone calls were made, and when they were traced, they went to his home, and the fact that when I asked him to recite Mrs. Cook's phone number, he recited it like it was his own" (T. 65). Asked by appellants' attorney under which part of Section 8-201 Gerald had been charged with, Officer Flagg answered "we set no specific charge in it, other than delinquency" (T. 68).

There was no conflict in the testimony with regard to the following facts at both the June 9th and June 15th hearings: that the parents were not given a copy of the petition or written notice of the hearing date except Mr. Flagg's note concerning the hearing on June 15th; that the parents were not informed of the right to subpoena witnesses, to cross-examine witnesses, of the right to confrontation, or

of the right to counsel (T. 40, 58-59, 78, 98);[7] that at no time during the juvenile proceeding was an investigation conducted to examine Gerald's home conditions or his behavior (T. 17, 38, 39, 69, 70). The only investigation claimed to have been made was apparently conducted in February, 1964, when Gerald had been put on probation on a previous delinquency charge (T. 69-70). No record exists of this previous charge or hearing other than a referral report made by the Probation Department (T. 16).

It is quite impossible, based on the Juvenile Judge's testimony, to know with any certainty what the basis was for the finding of delinquency. The Juvenile Court Judge thought that the phone calls "amount[ed] to disturbing the peace"[8] (T. 82) but he also considered that Gerald was "habitually involved in immoral matters" (*Ibid.*).[9]

The Judge's finding of juvenile delinquency was based on "the boy's statements" (T. 106-107) and upon the admission of Gerald Gault (T. 89) as to the use of lewd language and on facts not contained in the juvenile file, i.e., a referral report in the probation file dated July 2, 1962, that Gerald had stolen a baseball glove. On this report Judge McGhee had based his finding that the boy was delinquent because "habitually involved in immoral matters" even though the report was never followed up, no accusation was made or hearing held "because of lack of material

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[7] Though appellants testified that they know of their right to call witnesses and to retain an attorney (T. 15-16, 48-49), both Mr. Flagg and the Juvenile Judge acknowledged that they never advised the Gaults of their right to counsel, their right to subpoena witnesses or their right to cross-examine (T. 58, 78, 98). See discussion, pp. 22-23, *infra*.

[8] Thereby bringing the boy within §8-201(6)(a).

[9] Thereby bringing the boy within §8-201(6)(d).

foundation" (T. 83, 87-88). The report, and the fact that the judge relied on it, was not brought to appellants' knowledge until August 17, 1964 at the habeas corpus hearing (T. 99).

No warning about the possible consequences of the charges were given to appellants by the probation officer (T. 12, 39, 40, 71). Judge McGhee stated that he gave the usual warning in February and "reminded" the parents of the February admonition on June 9th (T. 90).

The Questions Are Substantial

Introduction

This case presents the important constitutional question of the extent to which fundamental requirements of procedural fairness guaranteed by the Due Process Clause of the Fourteenth Amendment are applicable to juvenile court proceedings. The importance of this issue was referred to in *Kent* v. *United States,* 34 U. S. L. Week 4228, 4232 (March 21, 1966), but the Court found it unnecessary to reach the problem in that case.

Historically, juvenile acts provided for informal court proceedings. These statutes have customarily been upheld on the ground that juvenile courts are not criminal courts and therefore it is permissible to dispense with the panoply of a full trial. The premise of these earlier decisions is increasingly being criticized.[10] As stated by a California

[10] Dembitz, Ferment and Experiment in New York: Juvenile Proceedings in The New Family Court, 48 Corn. L. Quart. 499 (1963); Ketcham, Legal Renaissance in the Juvenile Court, 60 Nw. U. Rev. 585 (1965); Antieau, Constitutional Rights in Juvenile Courts, 46 Corn. L. Quart. 381 (1961); Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957); Rubin, Protecting the Child in the Juvenile Court, 43 J. Crim. L. C. and P. S. 425.

court, the fact that delinquency involves the possible deprivation of liberty makes the differentiation between adult criminal proceedings and juvenile civil proceedings "for all practical purposes . . . a legal fiction presenting a challenge to credulity and doing violence to reason." *In re Contreras*, 109 Cal. App. 2d 787, 789, 241 P. 2d 631, 633 (1952), quoted in *In re Poff*, 135 F. Supp. 224, 226 (D. D. C. 1955).

As this Court recognized in *Kent* v. *United States, supra*, at 4232, "there is evidence, that there may be grounds for concern that the child receives the worst of both worlds—that he gets neither the protection afforded to adults nor the solicitous care and regenerative treatment postulated for children."

The purpose of taking juvenile cases out of the criminal courts for adults was "to afford the juvenile protection *in addition to those* he already possessed. The legislative intent was to enlarge, *not to diminish* these protections. . . . [It was] never intended that the child be barred from the protection of the Federal Constitution, but rather . . . that an additional protection be granted to the child." *In re Poff*, *supra*, at 225, 227. See also *Gallegos* v. *Colorado*, 370 U. S. 49 (1962).

Juvenile court proceedings affect thousands of individuals yearly in a way which can adversely determine

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(1952); Beemsterbaer, The Juvenile Court—Benevolence in the Star Chamber, 50 J. Crim. L. C. and P. S. 464 (1960); Skoler, Juvenile Courts and Young Lawyers, 10 The Student Law J. 5 (1964); Quick, Constitutional Rights in the Juvenile Court, 12 How. L. J. 76 (1966). A number of cases which have held that a juvenile is entitled to fundamental due process of law are listed by the Superior Court of Delaware, New Castle, in *Application of Naylor*, 207 A. 2d 1, 10 (1965).

their future lives.[11] It is indeed anachronistic that procedural safeguards are not required in a setting which for all practical purposes is accusatory and in which the accused, because of his youth, is ordinarily in no position to protect his basic interests. But it is fanciful to think that these interests are effectively protected by parents and a judge alone. Parents are ordinarily unqualified for the task, and judges are no more able to protect the rights of the accused than were judges in criminal trials under the rule of *Betts* v. *Brady*, 316 U. S. 455 (1942). Indeed, there is far less warrant to rely on a judiciary of which one fifth are not even lawyers and more than half of which devote less than one fourth of their time to juvenile and family matters.[12]

In short, this case is of substantial importance because it involves basic rights of large numbers of individuals who are being deprived of their liberty without due process of law.

I. The Arizona Juvenile Code Is Invalid Under the Due Process Clause of the Fourteenth Amendment.

The Arizona Juvenile Code (A. R. S. §§8-201–8-239) violates the Due Process Clause of the Fourteenth Amendment because, taken as a whole, it confers unlimited discretion on the juvenile judge without providing standards to prevent its arbitrary abuse. While juvenile court acts

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[11] 686,000 cases pertaining to delinquent children, exclusive of traffic offenses and neglect cases, were brought before juvenile courts in 1964. Juvenile Court Statistics—1964, U. S. Children's Bureau Statistical Services (1965).

[12] Biographical Data Survey of Juvenile Court Judges, George Washington University, Center of Behavioral Sciences, 10, 21 (1964). McCune & Skoler, Juvenile Court Judges in the United States, 11 Crime and Delinquency 121 (1965), puts the figure as one quarter non-lawyers.

rest on the theory that "the State is *parens patriae* rather than prosecuting attorney and judge . . . the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness." *Kent* v. *United States, supra,* at 4231. The Arizona statute, different from the statute at issue in *Kent,* gives the Juvenile Court more than a substantial degree of discretion; it confers a "license for arbitrary procedure." Cf. *Kent, supra,* at 4231.

The Arizona Code does not contain standards for the arrest of a child charged with a violation of law (§8-221) and, as interpreted by the Arizona Supreme Court, does not incorporate the general law of arrest (407 P. 2d at 769; appendix, *infra,* p. 41). The statute provides merely for an informal hearing in the judge's chambers (§8-229). No written transcript of the hearing is required, regardless whether the proceeding leads to a commitment or not; only a record of the name, age, place of birth of the child and names of his parents must be made. The statute does not impose any limitations on the judge with respect to the nature of evidence to be used; it does not contain a requirement for sworn testimony or cross examination of witnesses; it does not confer the privilege against self-incrimination upon the juvenile; it gives the judge authority to make any order for the commitment, custody or care of the child "as the child's welfare and the interest of the state require" (§8-231). No standards limit this wide discretion of the judge. He may commit a child until his majority. He is not required to establish a relationship between the specific act of juvenile delinquency and the period of commitment; he does not have to show that the juvenile's parents are unfit to handle the child when taking a child from the custody of his parents (407 P. 2d at 769).

Viewed as a total process, the procedure established by the statute confers arbitrary power on the juvenile judge inconsistent with the elemental demands of due process. In addition to providing practically unlimited discretion upon the juvenile judge, the statute dispenses with numerous traditional safeguards required by the Fourteenth Amendment.

1. *Notice of Charges.*

The first essential of judicial fairness requires that a person be given a clear understanding of the nature of the claims against him so that he can prepare his defense. *Cole* v. *Arkansas*, 333 U. S. 196 (1948). Due process requires that a child and his parents be apprised of the charges on which a juvenile is held.[13]

The Arizona Statute (§8-222) provides that a petition containing a general allegation of delinquency (without stating the facts supporting the allegations) is to be filed with the court.[14] The statute does not require this petition to be brought to the attention of the parents. Section 8-224 implies that the parents must be notified of the hearing by personal service. As interpreted by the Supreme Court of Arizona, the requirement of notice is satisfied by this procedure and by the rule that "no later than the initial hearing by the judge, [the parents] must be advised of the facts involved in the case. If the charges are denied, they must be

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[13] Paulsen, op. cit. at 557; Antieau, op. cit. at 395; see also Guidebook for Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency, p. 10 and Standards of Juvenile and Family Courts prepared by the U. S. Department of Health, Education, and Welfare, 1965.

[14] Cf. N. Y. Family Ct. Act, Sec. 731; Cal. Welfare and Institutions Code, Secs. 653, 656; Natl. Probation and Parole Assoc., Standard Juvenile Court Act, Sec. 12.

given a reasonable period of time to prepare." (407 P. 2d at 767; appendix, *infra*, p. 36).

This interpretation of adequate notice does not satisfy due process. As long as the specific allegations on which the charges are based are not communicated to the infant and his parents before the hearing, there is no possibility of determining intelligently whether to admit or contest the charges. A reasonable time to prepare and contest the charges is required after full appraisal of all facts.

2. *Right to Counsel.*

The Arizona Juvenile Code makes no provision for the right to counsel, including the right to be advised by the court about such right and to be furnished counsel by the state if necessary. Cf. *Von Moltke* v. *Gillies*, 332 U. S. 134 (1947); *Gideon* v. *Wainwright*, 370 U. S. 908 (1962). The Supreme Court of Arizona held that "parents of an infant cannot be denied representation by counsel of their choosing" but due process does not require "that an infant have a right to counsel. The parent and the probation officer may be relied upon to protect the infant's interests," except in cases of conflict between parent and child. In cases of the latter type the court has discretion to select an attorney to represent the infant. 407 P. 2d at 767; appendix, *infra*, p. 37. This Court has recognized in *Kent* v. *United States*, *supra*, at 4232, 4233, following *Black* v. *United States*, 355 F. 2d 104 (D. C. Cir. 1965), that assistance of counsel in the "critically important" determination of waiver of jurisdiction by a juvenile court is essential to the proper administration of juvenile proceedings.

Although this Court has not ruled on the constitutional question of the right to counsel in a juvenile proceeding which is at issue in the present case, the majority of legal writers,[15] federal and state court decisions,[16] and modern Juvenile Codes, such as in California and New York,[17] have expressed a consensus that the right of a child and his parents to assistance of counsel in a juvenile proceeding is founded in due process.

A juvenile proceeding involving a determination of delinquency carries with it sufficient social stigma and danger of deprivation of liberty so that it can be considered a "critical stage" as much as the criminal proceeding against an adult, *Hamilton* v. *Alabama*, 368 U. S. 52 (1961); *Shioutakon* v. *District of Columbia*, 236 F. 2d 666, 669 (1956), or waiver of jurisdiction by a juvenile court, *Kent* v. *United States, supra*, and requires the extension of the right to counsel to a juvenile delinquency hearing. Moreover, the wide discretion conferred upon the judge by the Arizona Juvenile Code makes effective assistance of counsel to protect the interests of the child and his parents of crucial importance as a general requirement of fundamental fairness.

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[15] Ketcham, Legal Renaissance in the Juvenile Court, 60 Nw. U. L. Rev. 585, 589, 593; Paulsen, op. cit. at 568; Anticau, op. cit. at 404. Isaacs, The Role of the Lawyer.

[16] *In re Poff, supra; Shioutakon* v. *District of Columbia*, 236 F. 2d 666 (1956).

[17] Cal. Welfare & Institutions Code, Sec. 679; N. Y. Family Ct. Act, Secs. 241, 741; Natl. Probation & Parole Assoc. (Natl. Conf. on Crime and Delinq.), Standard Juvenile Court Act, Sec. 19.

3. *Confrontation and Cross-Examination of Witnesses.*

The Arizona Juvenile Code does not contain a right to confrontation of witnesses. This Court has recognized in *Willner* v. *Committee on Character and Fitness*, 373 U. S. 96 (1963) and *Greene* v. *McElroy*, 360 U. S. 474 (1959), that due process requires the right to confrontation and cross-examination of adverse witnesses not only in criminal but also in administrative proceedings. A proceeding which might lead to detention of a juvenile in an institution requires this safeguard at least as much as the disbarment proceeding involved in *Willner*. The child should be able to face witnesses who give evidence against him, should be permitted to hear such evidence, and should have an opportunity to cross-examine witnesses. See *Ballard* v. *State*, 192 S. W. 2d 329, 332 (Tex. Civ. App. 1946); *Green* v. *State*, 123 Ind. App. 81, 108 N. E. 2d 647 (1952); see also Antieau, op. cit. at 401. Cf. *Pointer* v. *Texas*, 380 U. S. 400 (1965). As Professor Wigmore has said:

> "[T]hat the judge shall have the power to commit to long detention any persons without giving the person an opportunity to hear the substance of the testimony against him is fundamentally unsound and practically dangerous." 5 Wigmore Evidence §1400 at 145 (2d ed., 1940).[18]

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[18] As reported in Note, *Juvenile Delinquents, The Police, State, Courts, and Individualized Justice*, 79 Harv. L. Rev. 775, 795 (1966), Juvenile Court Judges in Los Angeles, Tucson, and Wisconsin Rapids, Wisconsin, report that they are satisfied with the operation of their courts despite application of unrelaxed rules of evidence.

4. *Right to Appellate Review and to a Transcript of the Proceeding.*

In connection with the practically unlimited discretion of the Juvenile Judge under the Arizona Statute the issue of the right to review by appeal the decisions of a juvenile court becomes of utmost importance.

The Supreme Court of Arizona held that the Arizona Code does not violate the due process requirements of the Fourteenth Amendment when denying appeal. It based its decision on *Ginn* v. *Superior Court*, 1 Ariz. App. 455, 404 P. 2d 721, which held that "appeal is a matter of privilege granted either by the Constitution or by statute" (404 P. 2d at 723) and that "the right to review is not essential to due process of law." *Id.* at 723, note 1, quoting from *Wisenberg* v. *Bradley*, 209 Iowa 813, 229 N. W. 205. Without entering into the question whether the right to appeal *per se* is contained in the constitutional guarantee of due process, a Juvenile Code such as the Arizona Code, which gives to the juvenile judge practically unlimited discretion in the conduct of a hearing, invites abuse of judicial power if, as a check on this power, review by appeal is not provided. Since "a fair trial in a fair tribunal is a basic requirement of due process," *Re Murchison*, 349 U. S. 133, 136 (1955), the right to challenge the fairness of a juvenile court decision, i.e., the right to review on the merits, is required by due process. Without such right no examination into the arbitrariness of the decisions by the juvenile judge is possible.

The absence of an official record of the hearing,[19] one of the basic shortcomings of this case, would also immediately

[19] Cf. Cal. W & I Code, Sec. 677; N. P. P. A. Standard Juvenile Act, Sec. 19.

be remedied by allowing review by appeal. This is apparent from the fact that the Supreme Court of Arizona in this case justified the absence of a record mainly by the absence of a right to appeal, reasoning that one of the main purposes of a transcript is to support an appeal. 407 P. 2d at 768; appendix, *infra*, p. 39.

5. *Privilege Against Self-Incrimination.*

In *Malloy* v. *Hogan*, 378 U. S. 1 (1964), this Court held that the Fifth Amendment privilege, the "essential mainstay" of the accusatorial system of criminal prosecution, applies to the States.

The Arizona statutes involved here make no provision for the privilege on behalf of juveniles[20] and, as pointed out in the next section, was in fact totally disregarded. But this Court said in *Malloy*:

> "Governments . . . are thus constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth." 378 U. S. at 8.

II. The Arizona Juvenile Code as Applied in This Case Deprived the Appellants of Due Process.

The wide discretion conferred upon the juvenile court by the Arizona Statute has been exercised in this case so as to deprive appellants of due process. The gross abuse of judicial power becomes abundantly clear by tracing the

[20] The claim was expressly rejected by the court below. Appendix, *infra*, p. 37.

specific events of this case and focusing on the absence of traditional and basic safeguards.

The child was arrested by the sheriff, detained by probation officers without an order of the court, and interrogated at length. The juvenile's parents were neither notified of the arrest nor informed of its grounds.

No official notice of the hearings was given to appellants. Mrs. Gault was verbally informed on the night of June 8th about a hearing the next day only when she requested information. The only written notice appellants ever received was contained in the note addressed to Mrs. Gault and received from probation officer Flagg on Friday, June 12th, about the continuance of Gerald's hearing "on his delinquency."

No effective notice of the charges of delinquency was given to appellants. Appellants did not receive the petition charging their son with delinquency. Even the minimal standards required by the Arizona Statute with regard to notice of delinquency charges as interpreted by the Arizona Court, i.e., that it is sufficient to advise the parents as late as the hearing about "the facts involved in the case," were not satisfied. As stated by Judge McGhee, his finding of juvenile delinquency was based not only on the "boy's statements" (T. 89) as to the use of lewd language, but also on the boy's "habitual involvement in immoral matters," based on a referral report in the probation file (T. 83, 85-88) which had never led to an accusation or hearing. The parents never had notice of this report and had no opportunity to deny those charges or defend against them.

The time allowed to appellants to prepare their case was extremely short. For the first hearing from 8 o'clock at

night until 3 o'clock on the next day; for the second hearing from Friday afternoon until Monday morning at 11 o'clock.

No witnesses were sworn at the hearings. The person who had complained about the telephone calls was not called as a witness even though appellants had asked for her presence at the hearing, because the judge decided that her presence was not necessary (T. 89). The evidence procured from her consisted in the probation officer's statement that he had talked to the witness once on the phone on June 9th. The judge never contacted her at all.

The judge's ultimate finding of delinquency was based, therefore, not only on hearsay evidence but on records not contained in the court file. As stated by Judge McGhee, the information in these records was never communicated to appellants and, in addition, related to complaints about the juvenile which had never been used as basis for a charge of delinquency on account of being not sufficiently proven (T. 83, 85-88).

The order of commitment taking the child from the custody of his parents was made without investigation of the conditions in his home at the time of the charged delinquency and apparently without warning, understood as such by appellants, about the possible consequences of the charges. On the contrary, appellants were kept in a false state of security by the judge's favorable comments about their son (T. 90), by the statements of the chief of police that their son would be put on probation (T. 47) and because they were unaware that the charge against their son ("habitually involved in immoral matters") was much broader than they had reason to believe. The discharge of their son prior to the second hearing contributed to their

confusion about the true state of facts. Moreover, the commitment order sending the child to the State Industrial School "for the period of his minority unless sooner discharged by due process of law" (Exhibit No. 4, *infra*, p. 48) made it possible that the juvenile might be held for six years. §8-236(A).

In both juvenile hearings appellants appeared without counsel and were informed neither of the right to counsel nor that they would be provided with counsel in case of need (T. 25, 58, 78). Mrs. Gault's statement in the habeas corpus proceeding that she knew she could have appeared with counsel at the juvenile hearing (T. 48) cannot be considered an intelligent waiver of the child's and appellants' own constitutional right to counsel under *Carnley* v. *Cochran*, 369 U. S. 506 (1963), and *Noia* v. *Fay*, 372 U. S. 391 (1963). (1) Appellants did not realize the breadth of the charges against their son which included besides the allegedly obscene telephone call being "habitually involved in immoral matters"; (2) they were confused about the meaning of the second hearing, not knowing if their son was heard as a witness or accused of a crime (T. 14, 21-22); (3) the judge's favorable comments about appellants' son (T. 90) and his answer to their question if Gerald would be committed (T. 34) gave them a false sense of security completely contrary to the seriousness with which the judge acted when committing their son to the State Industrial School without further warning or investigation of their home situation; (4) Appellants had no warning of the possible consequence of the hearing and no understanding of their rights, including their right to be confronted by Mrs. Cook after Judge McGhee told them that Mrs. Cook's presence was not necessary (T. 89).

No transcript of the proceeding was kept, making it impossible to establish what transpired at the juvenile hearings and leaving the existing record in conflict about the alleged admissions of the juvenile.

Since no appeal from the juvenile court's order was possible, the habeas corpus hearing granted to the appellants was the only way to review the legality of the juvenile's detention. The absence of a transcript of the juvenile court hearing and the limited review available in a habeas corpus proceeding did not afford effective review of the case on its merits.

From the above description, it is apparent that the application of Arizona's Juvenile Code in this case resulted in a proceeding which was barren of the protection required by the Due Process Clause of the Fourteenth Amendment.

CONCLUSION

For the reasons stated above, jurisdiction should be noted.

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APPENDIX

Opinion of the Supreme Court of Arizona

Application of PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor, for a Writ of Habeas Corpus.

No. 8549.

Supreme Court of Arizona.

En Banc.

Nov. 10, 1965.

Habeas corpus proceeding by parents to secure release of their minor son who had been committed to state industrial school. The Superior Court, Maricopa County, Fred J. Hyder, *J.*, entered order dismissing petition and remanding infant to appropriate authorities, and the parents appealed. The Supreme Court, Bernstein, *J.*, held that parents, who knew exact nature of charge against their minor child from day he was taken to detention home, who appeared at hearings without objection, who knew that they could have retained counsel, called witnesses and cross-examined probation officer, and who were advised by judge, when son had been found delinquent on another charge, that if he came before court again he might be committed, were not denied due process of law in connection with delinquency hearing pertaining to son.

Order affirmed.

* * * * *

BERNSTEIN, *Justice.*

The parents of Gerald Francis Gault appeal from an order entered by the Maricopa County Superior Court dismissing a petition for habeas corpus, discharging the writ and remanding the infant involved to the custody of the appropriate authorities in the Arizona Industrial School. Petitioners filed in this court August 3, 1964 seeking a writ of habeas corpus to secure the release of their minor son who had been committed to the Arizona Industrial School June 15, 1964.

On the same day the petition was filed, we ordered that the matter be heard by the Superior Court of Maricopa County, which hearing was held August 17, 1964. At that time, the following facts were elicited. On June 8, 1964 Gerald Gault and a companion, Ronald Lewis, telephoned from the Gault house to a Mrs. C. and made obscene remarks to her. She reported the incident, the call was traced and the boys picked up. They were taken to the detention home and that same evening Mrs. Gault went there and spoke to Gerald who admitted the episode but, according to her testimony at the habeas corpus hearing, said Ronald used the lewd language. Probation Officer Flagg told her why Gerald was there and said there would be a court hearing the next day. Judge McGhee heard the matter in chambers in the presence of Gerald, Ronald and his father, Mrs. Gault, her elder son Louis, and Probation Officers Flagg and Henderson.

There was a conflict in the testimony at the habeas corpus hearing concerning what transpired at the juvenile hearing. Mrs. Gault testified that in response to the Judge's questions at the juvenile hearing, Gerald said he dialed Mrs. C.'s number, asked her if it was such and such a number, said

there was a friend of his who wanted to talk to her, then handed the phone to Ronald who made the lewd remarks. Officer Flagg testified that at the juvenile hearing, Gerald admitted making the phone call and using some of the obscene language. Judge McGhee testified that Gerald admitted using some lewd words. The Judge further testified that at the conclusion of the juvenile hearing he told Mrs. Gault and Gerald he would think about the case and let them know his disposition of it. Gerald was returned to his home the 12th and on that day or the preceding day Mrs. Gault received a written note from Officer Flagg which said "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964, at 11:00 a. m. as the day and time for further hearings on Gerald's delinquency" signed "Flagg".

There was a further conflict in the evidence at the habeas corpus hearing concerning the testimony at the second juvenile hearing. Both Mr. and Mrs. Gault testified that no one accused Gerald of making a lewd telephone call and also said that Gerald admitted nothing. Both Mrs. Gault and Judge McGhee agreed that Mrs. Gault had asked him why Mrs. C. wasn't present to which he replied she didn't have to be. But Judge McGhee said Gerald admitted making some of the lewd remarks, although not the more serious ones. The Judge also testified that he informed the Gaults at the juvenile hearing of the possible consequences if Gerald was found to be delinquent, namely, commitment. Gerald did not testify at the habeas corpus hearing.

The Gaults were not given a copy of the petition or written notice of the hearing date except for Flagg's note concerning the hearing on the 15th. But it is clear that they knew the exact nature of the alleged act of delinquency, including the name of Mrs. C., from the day Gerald was

detained and they appeared at both juvenile hearings without complaint of inadequate time.

The parents claim they were not informed of a right to counsel, to subpoena witnesses, to cross examine witnesses, of the right of confrontation, to sworn testimony and to a warning of the possible consequences of a finding of delinquency. Assuming they have these rights, it appears from the record that they knew of their right to counsel, to subpoena and cross examine witnesses, of the right to confront the witnesses against Gerald and the possible consequences of a finding of delinquency. In February 1964, Judge McGhee found Gerald delinquent on a different charge and informed the parents that if Gerald came before the court again and was found to be delinquent he might be committed.

The assignments of error may be grouped under three major headings: (1) that the Juvenile Code, A.R.S. § 8-201 et seq., is unconstitutional because it fails to apprise parents and children of the specific charges, does not require timely, adequate and proper notice of a hearing and does not provide for an appeal, all of which is a deprivation of procedural due process of law; (2) that the juvenile court in fact denied petitioners due process of law by failing to provide proper notice of the charge and the hearing, failing to notify them of certain constitutional rights, by relying upon unsworn hearsay testimony, by failing to make a record and by removing custody of Gerald from his parents without a showing of their incompetency or inability to properly care for him, and finally, (3) a group of miscellaneous errors dealing with the habeas corpus hearing in Maricopa County and the original detention of Gerald.

The parents contend our juvenile code is unconstitutional because it fails to provide for adequate notice of the alleged

act of delinquency and fails to provide for proper notice of a juvenile hearing sufficiently in advance to enable the parents and child to decide whether to admit or contest the allegations. It is also argued that the statute is invalid because it does not provide for an appeal procedure. All of these omissions are said to violate procedural due process of law contrary to our state and federal constitutions. U. S. Const. Amendment 14, § 1; Arizona Const. Art. 2, § 4, A.R.S.

[1] We first consider petitioners' complaint that the juvenile code does not provide for an appeal. The question was decided adversely to them in Ginn v. Superior Court, in and for County of Pima, 1 Ariz.App. 455, 404 P.2d 721. We agree with the scholarly opinion of our appellate tribunal and hold that there is no right of appeal from a juvenile court order, nor does the general appeal statute apply, § 12-2101 A.R.S.; 404 P.2d at 724. We note that our Constitution gives to the superior court *exclusive original jurisdiction in all proceedings and matters affecting delinquent children,* Article 6, § 15.

Section 8-201(6) defines a delinquent child as one who has violated a law, regulation or ordinance; is uncontrolled by his parent because incorrigible, wayward or habitually disobedient; habitually truant from school or home or habitually deports himself so as to injure or endanger the morals or health of himself or others. Section 8-222 provides that the powers of the court may be exercised upon the filing of a petition alleging that the child is delinquent but not the facts upon which the allegation is based. The court may order that a petition be filed if, after a preliminary inquiry, it determines that formal jurisdiction over the child should be acquired. Once jurisdiction at-

taches the court may compel the production of the child and the attendance of the parents or guardian, Section 8-224. This provision makes it clear that the parent or guardian must be notified of the hearing by personal service if practical. The hearing must be held informally in chambers, Const. Art. 6, § 15; § 8-229, and the judge "shall make such order for the commitment, custody and care of the child as the child's welfare and the interests of the state require", § 8-231. Once acquired, the jurisdiction of the court over the child continues until he is 21 years of age unless sooner discharged, § 8-236. An adjudication by the court upon the status of the child shall not impose any civil disability, nor shall the child be deemed a criminal. Moreover, the adjudication is not a conviction and evidence given in the juvenile court is inadmissible in any other court, § 8-228. Unless the child is convicted of an offense in the interim, the court must destroy its records 2 years after the termination of probation or discharge from an institution, § 8-238.

[2-4] We approach this challenge to the juvenile code aware of our duty to give to the language of all statutes a meaning that will render them constitutional if this can reasonably be done. State v. Locks, 91 Ariz. 394, 372 P.2d 724. We will not declare a legislative act unconstitutional unless satisfied beyond a reasonable doubt of its invalidity. State Board of Technical Registration v. McDaniel, 84 Ariz. 223, 326 P.2d 348. In short, our duty is to reconcile the language of a statute with the constitutional provisions if possible. Roberts v. Spray, 71 Ariz. 60, 223 P.2d 808. Although the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law, Art. 2, § 4, is not expressly implemented in the juvenile

code, we have held a statute valid in other situations though we had to imply into the language a necessary element of the problem. In State v. Krug, 96 Ariz. 225, 393 P.2d 916 we held constitutional the "perjury by contradictory statements" statute, § 13-562, A.R.S. though it failed to expressly use the word "willfully", a necessary element of the offense. We said the element was implicit in the statute. Similarly, our constitution guarantees due process of law and the specific implementation of that concept impliedly exists in the juvenile code. We have held that any statutory provision for a hearing means a hearing in a substantial sense meeting the requirements of due process. State v. Essman, 98 Ariz. 228, 403 P.2d 540; McGhee v. Arizona State Board of Pardons and Paroles, 92 Ariz. 317, 376 P.2d 779; Forman v. Creighton School District No. 14, 87 Ariz. 329, 351 P.2d 165. The problem is ascertaining the particular elements which constitute due process in a juvenile hearing.

All jurisdictions have juvenile codes and all provide for less than the full set of due process guarantees available in a criminal proceeding. Yet, the overwhelming majority of courts have expressly or impliedly recognized the statutes to be constitutional. Harris v. State, 24 Ala.App. 59, 129 So. 795; Ex parte Daedler, 194 Cal. 320, 228 P. 467; Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892, 45 L.R.A., N.S., 908; Egoff v. Board of Children's Guardians, 170 Ind. 238, 84 N.E. 151; Farnham v. Pierce, 141 Mass. 203, 6 N.E. 830; Mill v. Brown, 31 Utah 473, 88 P. 609; In re Lewis, 51 Wash. 2d 193, 316 P.2d 907. For a compilation of early decisions upholding constitutionality of juvenile statutes and denying that restraint of infants pursuant to juvenile hearings impairs their constitutional rights see In re Sharp, 15 Idaho 120, 96 P. 563, 18 L.R.A., N.S., 886.

[5-10] We are aware of the tide of criticism inundating juvenile proceedings. The major complaint deals with the informal, nonadversary procedure for determining delinquency rather than the treatment rendered after a finding of delinquency. On the other hand, juvenile courts do not exist to punish children for their transgressions against society. The juvenile court stands in the position of a protecting parent rather than a prosecutor. It is an effort to substitute protection and guidance for punishment, to withdraw the child from criminal jurisdiction and use social sciences regarding the study of human behaviour which permit flexibilities within the procedures. The aim of the court is to provide individualized justice for children. Whatever the formulation, the purpose is to provide authoritative treatment for those who are no longer responding to the normal restraints the child should receive at the hands of his parents. The delinquent is the child of, rather than the enemy of society and their interests coincide. This is the basis for the general rejection of the criminal law adversary proceeding. Generally, see Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis. L.R. pp. 7-12; Paulsen, The Juvenile Court and the Whole of the Law, 11 Wayne L.R. 597; Molloy, Juvenile Court—A Labyrinth of Confusion for the Lawyer, 4 Ariz.L.R. 1, 5. We have stated that the purpose of our juvenile statute is to redirect and rehabilitate the child. State v. Shaw, 93 Ariz. 40, 378 P.2d 487. Of course, the parents' right of custody is natural and legal. The court should not remove a child from its parents except for the gravest of reasons. The informality referred to in A.R.S. § 8-229 merely authorizes the court to disregard technical matters of procedure not affecting the funda-

mental right to due process of law. Arizona State Dept. of Public Welfare v. Barlow, 80 Ariz. 249, 296 P.2d 298.

[11] The conceptual basis for the juvenile code is the parens patriae doctrine where the state acts in loco parentis to the child. However, the Montana Supreme Court has said and we agree that:

> "This court does not wish to permit the parens patriae doctrine to prevent a fair hearing. The parens patriae doctrine is intended to benefit and protect both juvenile delinquents and the public, but the doctrine cannot serve as justification for illegal detention no matter how labelled." State v. Johnson, 141 Mont. 1, 374 P.2d 504, 506.

[12] Good intentions do not justify depriving a child of due process of law. "Otherwise, all that is necessary to justify a despotism is to make sure it intends to be benevolent." Waite, How Far can Court Procedure Be Socialized Without Impairing Individual Rights, 12 J. Crim.L. & C. 339, 341. Fairness is not inimical to the proper treatment of juveniles. Justice is as good for them as it is for adults.

Those who criticize the juvenile statutes object to the great power of the judge. But that power is necessary to achieve the individualized consideration of the child which is as valid an objective today as it was 60 years ago when the juvenile court movement began. Dean Pound, speaking of family court procedures, said:

> "Instead of being wholly contentious the proceeding in the family court division should be investigatory—directed to determining the best disposition or adjustment of the family situation as a whole and seeking a

complete disposition thereof. It may involve contentious trial of certain issues of fact. But the proceeding as a whole should not be primarily and characteristically contentious." Pound, The Place of the Family Court in the Judicial System, 10 Crim. & Del. 532, 542.

At the 1960 UN Seminar on human rights and the criminal law it was agreed that in all its functions, retributive, deterrent, reformative and educative—it was possible for the criminal law to be defined and applied so as to conflict with human rights. Any one of these purposes carried to the extreme could lead to serious and unjustified infringements of human rights. Morris & Howard, Studies in Criminal Law 157 (64). The point is that the law, juvenile or otherwise, is no better than its administrators. Of course, it is legitimately argued that properly worded statutes decreases the opportunity for less able administrators to prejudice our citizens. In 1961 California adopted a juvenile code which attempts to provide a practical balance between civil due process for the infant and the informal court atmosphere which minimizes the harmful effects of the proceeding and encourages the minor's receptivity to treatment. In re Mikkelsen, 226 Cal.App.2d 467, 38 Cal. Rptr. 106. Our task is to determine the procedural due process elements to which an infant and his parents are entitled in a juvenile hearing and decide whether our statute may be construed to include them. Then we must decide whether petitioners and their son were deprived of those rights to their prejudice.

[13, 14] The parent or guardian must be notified of the hearing, and anyone whose rights may be affected by the court's determination must be notified, In re Mendevil, 21

Ariz. 586, 193 P. 17 and In re Johnson, 86 Ariz. 237, 345 P.2d 423, and such notice must be given a reasonable time prior to the hearing. Moreover, the child and parent must be informed of the alleged act of delinquency before an adjudication of delinquency is made.

This brings us to petitioners' second assignment of error alleging that the juvenile court, in fact, denied them and Gerald procedural due process of law because of the informal manner in which the hearing was conducted.

[15] The conflict between the legal profession's inculcated traditional due process guarantees and the sociologist's concept of proper treatment for the juvenile delinquent has understandably created divergent decisions by appellate courts. Many cases have generally held that the full array of criminal procedural safeguards are not required in juvenile proceedings. People v. Dotson, 46 Cal.2d 891, 299 P.2d 875; People ex rel. Weber v. Fifield, 136 Cal. App.2d 741, 289 P.2d 303; Akers v. State, 114 Ind. App. 195, 51 N.E.2d 91; People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001; In re Holmes, 379 Pa. 599, 109 A.2d 523. But the decisions are in conflict concerning particular procedural safeguards. It has been held that a general allegation of delinquency, without stating the facts supporting the allegation, is a sufficiently definite accusation. In re Bentley, 246 Wis. 69, 16 N.W.2d 390; In re Duncan, Ohio App., 107 N.E.2d 256. That is the requirement of our statute, A.R.S. § 8-222. Other jurisdictions have decided that due process requires more detailed notice. Wheeler v. Shoemake, 213 Miss. 374, 57 So.2d 267. As we said above, the juvenile and his parents or guardian are undoubtedly entitled to know the facts upon which the allegation of delinquency is based. On the other hand, we have

held that the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past. State v. Guerrero, 58 Ariz. 421, 120 P.2d 798. We think the proper balance between the infant's right to know the facts of the charge against him and the state's interest in avoiding or erasing the stigma of delinquency is best struck by the following rule: the infant and his parent or guardian will receive a petition only reciting a conclusion of delinquency. But no later than the initial hearing by the judge, they must be advised of the facts involved in the case. If the charges are denied, they must be given a reasonable period of time to prepare.

[16-18] Some courts have held that the infant is not entitled as of right to the appointment of counsel or to be represented. In re Holmes, supra; Akers v. State, supra; People v. Dotson, supra; People ex rel. Weber v. Fifield, supra. But other courts have held otherwise. Ex parte State ex rel. Echols, 245 Ala. 353, 17 So.2d 449; In re Contreras, 109 Cal.App.2d 787, 241 P.2d 631; see Cal. Welfare & Inst'ns Code §§ 500-914; N.Y. Family Court Act §§ 249, 741. There is disagreement as to whether the court must advise the infant that he has a right to counsel. Some courts say no, Robinson v. State, Tex.Civ.App., 204 S.W.2d 981, and others say yes. Shioutakon v. District of Columbia, 98 U.S.App.D.C. 371, 236 F.2d 666, 60 A.L.R.2d 686. We have held that the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. Arizona State Dept. of Public Welfare v. Barlow, supra. But a child has different rights and disabilities. State v. Shaw, supra. Section 8-221 A.R.S. provides that when a police officer arrests a child he must immediately notify a probation officer and make such disposition of the

child as the probation officer directs. Section 8-204, subd. C(1) A.R.S. states that the probation officer shall look after the interests of neglected, delinquent and dependent children. Paragraph 3 of subsection C requires him to be present in court when cases are heard concerning children and represent their interests. Of course, the juvenile court always has discretion to allow representation. Many times an attorney may be helpful to the court, particularly where he has the confidence of parents and child and understands the seriousness of the hearing. But we do not think due process requires that an infant have a right to counsel. The parent and the probation officer may be relied upon to protect the infant's interests. If, however, the court discerns any conflict between the parent and child, it has discretion to select an attorney to represent the infant.

[19] Courts have held that the infant does not have a privilege against self-incrimination or a right to be advised of the privilege, In re Santillanes, 47 N.M. 140, 138 P.2d 503; In re Holmes, supra, but the contrary has been held. Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269, 151 A.L.R. 1217. We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.

It has been held that the infant has no right to confront the witnesses against him. Cinque v. Boyd, 99 Conn. 70, 121 A. 678; In re Holmes, supra. We think the relevancy of confrontation only arises where the charges are denied.

[20, 21] Some courts have felt obliged to apply the usual rules of evidence when deciding whether the infant committed the alleged act of delinquency, In re Contreras, supra; People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584,

including the necessity of sworn testimony, In re Mantell, 157 Neb. 900, 62 N.W.2d 308, 43 A.L.R.2d 1122, and the exclusion of hearsay, In re Green, 123 Ind.App. 81, 108 N.E.2d 647; State ex rel. Palagi v. Freeman, 81 Mont. 132, 262 P. 168. But other courts have held the admissibility of hearsay proper, Campbell v. Siegler, 162 A. 154, 10 N.J.Misc. 987; In re Bentley, 246 Wis. 69, 16 N.W.2d 390, and sworn testimony unnecessary, State in Interest of Christensen v. Christensen, 119 Utah 361, 227 P.2d 760. We think the sounder rule allows the judge to consider hearsay though the hearing is contested, but sworn testimony must be required of all witnesses including police officers, probation officers and others who are part of or officially related to the juvenile court structure. But the hearsay upon which the judge can rely must be of a kind on which reasonable men are accustomed to rely in serious affairs. Reynolds Metals Co. v. Industrial Commission, 98 Ariz. 97, 402 P.2d 414.

The applicable burden of proof varies from a mere preponderance as in a civil case, State ex rel. Berry v. Superior Court, 139 Wash. 1, 245 P. 409, 45 A.L.R. 1530, to proof beyond a reasonable doubt, Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444.

[22, 23] A juvenile court proceeding is not a criminal case. It is a proceeding affecting children and concerns the need for some disposition to be made of a child whose welfare in relation to society is seriously involved. It may arise out of dependency, neglect or delinquency. Ariz. Const. Art. 6, § 15. The delinquency may or may not involve commission of a crime by the child. The juvenile court may either suspend or refuse to suspend criminal prosecution when a child is accused of committing a crime. If it sus-

pends criminal prosecution and retains jurisdiction, the juvenile court determines whether the child has committed a crime, not for the purpose of finding the child guilty or not guilty, but for the purpose of determining that the child has committed an act of delinquency. Acknowledging the non-criminal nature of the proceeding, yet mindful of the fact that a parent may be deprived of his child and the child of his liberty, we think the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act.

[24] Petitioners complain that no transcript of either juvenile hearing was prepared and the record of the court did not contain findings of fact upon which the conclusion of delinquency was based. They argue that an intelligent appeal cannot be taken without a complete transcript and record. The purpose of a transcript, in some instances, is to support an appeal. But there is no right to an appeal. Furthermore, the evidence adduced at a juvenile hearing is of a confidential nature because it is inadmissible in other courts, A.R.S. § 8-228, and the record must be destroyed after a prescribed period of time, A.R.S. § 8-238. We think the juvenile court has discretion to order or deny the taking of a transcript.

[25] Applying all of the above requirements to the hearing under review, we find that petitioners were not denied due process of law. Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home. She and Gerald appeared at the first hearing without objection. Mr. and Mrs. Gault, together with Gerald, appeared at the second hearing before Judge McGhee without objection. Petitioners knew they could have retained counsel, called witnesses and cross examined Probation Officer Flagg.

Petitioners complain that the judge failed to advise them and Gerald of the possible consequences of a finding of delinquency. We know of no such rule. Nor does the concept of a fair hearing suggest a need for the rule. In any event, the record indicates that petitioners were advised by Judge McGhee in February 1964 when Gerald was found delinquent on another charge that if he came before the court again he might be committed.

[26] Petitioners claim there was insufficient evidence to support a finding of delinquency. We note that the juvenile court had acquired jurisdiction over Gerald in February, 1964 when Judge McGhee placed him on six months probation. Section 8-236 A.R.S. states that once jurisdiction is acquired it continues until the child is 21 years of age unless sooner discharged. The six month probation period had not terminated when Gerald came before Judge McGhee in June 1964. Therefore, the Judge could have committed Gerald without any further showing of delinquency if he decided Gerald's welfare and the interests of the state so required, A.R.S. § 8-231. In any event, at the habeas corpus hearing Judge McGhee testified he found that Gerald violated A.R.S. § 13-377, the vulgar or obscene language statute, A.R.S. § 8-201, subd. 6(a) which states that a violation of the law is delinquency and (d) defining a delinquent as one who habitually deports himself so as to endanger his morals or health. There is substantial evidence in the record to support the finding that Gerald was a delinquent child.

[27, 28] Petitioners contend the juvenile court erred in removing Gerald from their custody upon the single ground that he was delinquent. They argue we establish a rule which would require, in addition to a finding of delinquency,

a finding of the parents' unfitness to retain custody before they could be deprived thereof. We cannot agree. We emphasize the fact that the child's welfare is the primary consideration before the juvenile court and the judge will make such order as the child's welfare and the interests of the state require. It is apparent that the best interest of a child and the fitness of his parent are not necessarily interdependent. In State in Interest of Christensen v. Christensen, 119 Utah 361, 227 P.2d 760, the court quoted from an earlier decision [In re State, in Interest of Bennett, 77 Utah 247, 293 P. 963] where it said:

> "'It may well be that parents are generally fit to have the custody of their children, and yet they may be unable to prevent one or more of their children from committing acts of delinquency * * * In such case the juvenile court may commit such juvenile to the industrial school when the best interests of the juvenile or the protection of society demand such commitment.'" 227 P.2d at 762.

Other recent cases which hold that the juvenile court may commit a delinquent child without first deciding the unfitness of the parents are State v. Johnson, supra, and Spangler v. Breashears, Tex.Civ.App., 359 S.W.2d 206.

[29] Petitioners claim the infant was unlawfully arrested and detained because A.R.S. § 13-1403 allows arrest for a misdemeanor without first obtaining a warrant only if it is committed in the presence of the officer. The arrest must be made immediately or on fresh pursuit. The general law of arrest is usually held to be inapplicable in juvenile proceedings. State ex rel. Palagi v. Freeman, supra; Mill v. Brown, supra; Lindsay v. Lindsay, supra; Wheeler v.

Shoemake, supra. Furthermore, A.R.S. § 8-221 provides the procedure for arrest of a child. It states that a police officer shall forthwith notify the probation officer upon arresting a child and shall make such disposition of the child as the probation officer directs, State v. Shaw, supra. The article also states that this "shall not be construed to prohibit a peace officer from taking into custody a child who is found violating a law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken."

Petitioners' other assignments of error deal with rulings by the court during the habeas corpus hearing. They complain that the cross examination of Judge McGhee was improperly restricted. They also contend there was insufficient evidence to support the conclusion of the legality of Gerald's detention. We have considered these assignments and find them to be without merit.

The order of the Maricopa County Superior Court is in all respects affirmed.

LOCKWOOD, *C.J.*, STRUCKMEYER, *V. C.J.*, and UDALL and MCFARLAND, *JJ.*, concur.

Superior Court of Maricopa County
Minute Entry

August 17, 1964

Division No. 8
Hon. Fred J. Hyder, Judge

* * * * *

It is ordered, adjudged and decreed that the petition be dismissed and the writ discharged and that Gerald Francis Gault remanded to the custody of the respondent.

Exhibit 1

Mrs. Gault:

Judge McGhee has set Monday June 15, 1964 at 11:00 A.M. as the date and time for further Hearings on Gerald's delinquency.

/s/ Flagg

Juvenile Referral Report

Name Gerald Gault Age 15 Birth Date 1-23-49

Address Globe Mobile Homes / Birth Place

Date 6-8-64 Charge Lewd Obsne Calls

Sex M Race W Phone 2-4151

School G.H.S. Grade 9th

Works

Father Works

Mother Marjorie Works Baby Sitter

Guardian Works

Referred by D.C. Clerk Arresting Officer T. Trojanowich

Parents Notified by Date Hour

☒ Follow Up Requested ☐ No Follow Up Requested

— DETAILS

Gerald says to me ask this woman today if she is your Cherrie sister? - Do you have dirty books? Do you give any? Do you have a dirty mind trick?"

FILED
AT 4 o'clock P M
JUN 15 1964
CLERK
BY DEPUTY

	Court Action	Case No. 2379
	Handled by Probation Officer	
X	Placed in Detention	6-9-64 Detained
X	Released from Detention	6-16-64
X	Petition Filed	6-9-64
✓	Hearing Held	6-15-64
	Dismissed	
X	Committed to State Industrial School	6-15-64
	Committed to Good Shepherd School	
	Placed on Probation	

Exhibit 3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

HAVING AND EXERCISING JURISDICTION IN JUVENILE MATTERS

Petition No. 2379

In the Matter of

GERALD FRANCIS GAULT

a Delinquent Minor

Your petitioner respectfully represents to this Honorable Court that he is a resident of Gila County, State of Arizona; that he is informed and believes and therefore alleges that said minor is under the age of eighteen years, and is in need of the protection of this Honorable Court; that said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare.

WHEREFORE, your petitioner prays this Honorable Court issue an order for the production of said minor, at a time and place to be named by the Court, and that upon a hearing such order may be made by the Court regarding the care and custody of said minor as to the Court may seem just and proper, and that, pending such hearing, such other orders regarding the care and custody of said minor may be made as the Court may deem necessary.

/s/ CHARLES D. FLAGG

STATE OF ARIZONA,
COUNTY OF GILA, *ss.*:

CHARLES D. FLAGG, being first duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact, except as to matters therein stated upon information and belief, and as to such matters he believes them to be true.

/s/ CHARLES D. FLAGG

Subscribed and sworn to before me this 9th day of June, 1964.

.....

Notary Public

My Commission Expires:

.....

Exhibit 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF GILA
HAVING AND EXERCISING JURISDICTION IN JUVENILE MATTERS

COMMITMENT TO THE STATE
INDUSTRIAL SCHOOL No. 2379

In the Matter of
GERALD FRANCIS GAULT
a Delinquent Minor

A Petition having been heretofore filed by Charles D. Flagg, Probation Officer for the County of Gila, State of Arizona, charging the aforesaid minor with being a delinquent child within the meaning of the Statutes of the State of Arizona applicable thereto;

Now, this 15th day of June, 1964, said matter coming on regularly to be heard before the Judge of the said Superior Court of said County of Gila, in Chambers, and after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years.

And the Court finds that the said child's own good and the best interests of the State require that he be committed to the State Industrial School for the period of his minority, unless sooner discharged by due process of law.

A certified copy of this Order shall be a warrant for the Probation Officer of Gila County to deliver the said child to said Industrial School, and for the authorities of said Industrial School to receive and keep said child as herein ordered and provided.

DATED AT GLOBE, ARIZONA, this 15th day of June, 1964.

/s/ ROBERT E. McGHEE
Robert E. McGhee, *Judge of the Superior Court*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

In the Matter of the Application

—of—

PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor.

BRIEF FOR APPELLANTS

Opinions Below

The opinion of the Supreme Court of Arizona (R. 83-97) is reported at 99 Ariz. 181, 407 P. 2d 760. The Superior Court of Maricopa County, Arizona, from which appeal was taken, wrote no opinion. The Juvenile Court of Gila County wrote no opinion; its decision is found in the order of commitment, dated June 15, 1964, contained in the Record as Exhibit 4 (R. 81-82).

Jurisdiction

Appellants filed a petition for a writ of habeas corpus in the Supreme Court of Arizona on August 3, 1964, pursuant to the provisions of Chapter 8 of the Criminal Code of the Arizona Revised Statutes (1956), Sections 13-2001-2027. The same day, the Supreme Court of Arizona

ordered a hearing of the application in the Superior Court of Maricopa County. The hearing was held on August 17, 1964. The Superior Court dismissed the petition, discharged the writ, and remanded the juvenile to the State Industrial School.

The order of the Superior Court was affirmed on appeal by the Supreme Court of Arizona on November 10, 1965, and a timely application for rehearing was denied by that Court on December 16, 1965 (R. 99). Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Arizona on February 4, 1966 (R. 100). On March 21, 1966, Hon. Fred C. Struckmeyer, Chief Justice of the Supreme Court of Arizona, enlarged appellants' time to file the Jurisdictional Statement and to docket the appeal to May 5, 1966. The Jurisdictional Statement was filed on May 2, 1966 and probable jurisdiction was noted on June 20, 1966. Jurisdiction on appeal is conferred by 28 U.S.C. §1257(2).

Statutes Involved

Article 6, Section 15 of the Arizona Constitution, the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, and Title 13, Sec. 377, Arizona Revised Statutes, are set forth in full in the Appendix to this brief.

Question Presented

Whether the Juvenile Code of Arizona, Sections 8-201 to 8-239, Arizona Revised Statutes, on its face or as construed and applied, is invalid under the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it authorizes a juvenile to be taken from the custody of his parents and to be committed to a state institution by a judicial proceeding which confers unlimited discretion upon the Juvenile Court and dispenses with the following procedural safeguards required by due process of law:

1. right to notice of the charges of delinquency;
2. right to counsel;
3. right to confrontation and cross-examination of adverse witnesses;
4. privilege against self-incrimination;
5. right to a transcript of the proceedings; and
6. right to appellate review of the juvenile court's decision.

Statement of the Case[1]

Appellants are the parents of fifteen year old Gerald Francis Gault who was committed as a juvenile delinquent to the State Industrial School in Arizona after a juvenile proceeding in the Superior Court of Gila County, Globe, Arizona, on June 15, 1964. No transcript exists of the hearing before the juvenile court.[2]

On June 8, 1964, Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County as the result of a complaint by one Mrs. Cook, a neighbor of the boys, about lewd telephone calls made to her. Gerald was at this time on six months' probation following an incident in February, 1964 (R. 13). Probation officers Flagg and Henderson decided to detain the children (R. 48). Mr. Flagg interrogated Gerald at some length during the evening of June 8th and the morning of June 9th (R. 48).

No notice of the detention or charges was left at the Gault home. Mrs. Gault, who returned from work at 6:00 P.M., was informed by neighbors about the detention and went to the detention home. There she was told by probation officer Flagg why Gerald was detained and that a hearing would be held at 3 o'clock the following day, June 9th.

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[1] The statement of facts is based on the habeas corpus hearing held on August 17, 1964 in the Superior Court of Maricopa County after a petition for a writ of habeas corpus had been filed by appellants on August 3, 1964 in the Supreme Court of Arizona to secure the release of the child. The record of that hearing is part of the record on appeal.

[2] The Arizona statute does not require a record to be made of juvenile hearings but only of the age, place of birth and name of the child and his parents (§8-229).

No written notice of the hearing or of the charges was given to Mrs. Gault (R. 29-30).

A petition charging Gerald with juvenile delinquency was filed by probation officer Flagg with the Court on June 9, 1964, but Mrs. Gault had not received notice of it and did not see it until August 17, when the habeas corpus hearing was held (R. 33). A referral report charging Gerald with making "lewd phone calls" made by the Probation Department, filed on June 15, 1964, was also not brought to appellants' notice until August 17th, when introduced by appellants' attorney together with the above mentioned petition (R. 34).

On June 9th a hearing took place in the Juvenile Judge's chambers in the presence of Gerald, his mother, his older brother Louis, and Mr. Flagg and Mr. Henderson, the probation officers. Mr. Gault, Gerald's father, was in Grand Canyon at work (R. 20). No one was sworn at this hearing (R. 30). No transcript was made (R. 54).

Gerald testified at the June 9th hearing about the telephone call. There was a conflict at the habeas corpus hearing about this testimony. Mrs. Gault testified that Gerald said he only dialed Mrs. Cook's number and his friend talked to Mrs. Cook (R. 30), while Judge McGhee, the Juvenile Judge (R. 59), and Probation Officer Flagg testified that Gerald admitted having said some of the lewd words but not the more serious ones (R. 59). At the conclusion of the hearing, in answer to a question by Gerald or his mother if Gerald would be sent to Fort Grant,[3] Judge McGhee said:

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[3] The State Industrial School.

"No, I will think it over" (R. 31, 39). Gerald stayed in the detention home until June 12th when he was released to his parents. At 5 o'clock that day, Mrs. Gault received a written note[4] signed by Officer Flagg which said: "Mrs. Gault, Judge McGhee has set Monday, June 15th, 1964 at 11:00 A.M. as the day and time for further hearings on Gerald's delinquency." (Exhibit 1, R. 8.)

At the hearing on June 15th, both appellants were present, Mr. Gault having returned home on June 12th (R. 21). Others present at this hearing before Judge McGhee were Ronald Lewis with his father, and probation officer Flagg.

Mrs. Cook, the person who had complained about the phone call, was not present or called as a witness. Probation officer Flagg had only talked to her over the phone on June 9th (R. 48) and Judge McGhee had not spoken to her at all (R. 76). When Mrs. Gault asked the judge during this hearing why Mrs. Cook was not present, and said that "she wanted Mrs. Cook present so she could see which boy had done the talking, the dirty talking over the phone" (R. 36), Judge McGhee answered, "she didn't have to be present at that hearing" (R. 36).

Conflict also exists about Gerald's testimony at this second hearing. Appellants (R. 35) and Mr. Flagg (R. 45) stated that Gerald did not admit having made any lewd remarks and only dialed the number. Judge McGhee testified that Gerald again admitted having made some of the obscene remarks but not the more serious ones (R. 61).

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[4] There was a conflict in the testimony as to when Gerald was released and when Mrs. Gault received this note. Probation officer Flagg, without having made a record about these events, testified that both occurred on Thursday, June 11th.

There was no other evidence about Gerald's use of lewd language. Probation officer Flagg testified that Gerald had never admitted to him that he used any indecent language over the telephone (R. 57). Nevertheless, in the referral report by the probation department (Exhibit 2, R. 79) the charge against Gerald on June 8, 1964 was "lewd phone calls."

The June 9th petition filed by Mr. Flagg with the Superior Court, Gila County (Exhibit 3, R. 80) alleged that Gerald Gault was "a delinquent minor." Probation officer Flagg based this charge on the fact that "the phone calls were made, and when they were traced, they went to his home. And the fact that when I asked him to recite Mrs. Cook's phone number, he recited it like it was his own" (R. 50). Asked by appellants' attorney under which part of Section 8-201 Gerald had been charged with, Officer Flagg answered "we set no specific charge in it, other than delinquency" (R. 52).

There was no conflict in the testimony with regard to the following facts at both the June 9th and June 15th hearings: that the parents were not given a copy of the petition or written notice of the hearing date except Mr. Flagg's note concerning the hearing on June 15th; that the parents were not informed of the right to subpoena witnesses, to cross-examine witnesses, of the right to confrontation, or of the right to counsel (R. 35, 46-47, 59, 71);[5] that at no time during the juvenile proceeding was an investigation

[5] Though appellants testified that they knew of their right to call witnesses and to retain an attorney (R. 19, 40), both Mr. Flagg and the Juvenile Judge acknowledged that they never advised the Gaults of their right to counsel, their right to subpoena witnesses or their right to cross-examine (R. 46, 59, 71).

conducted to examine Gerald's home conditions or his behavior (R. 20, 34, 53). The only investigation claimed to have been made was apparently conducted in February, 1964, when Gerald had been put on probation on a previous delinquency charge (R. 53). No record exists of this previous charge or hearing other than a referral report made by the Probation Department (R. 13).

It is difficult, based on the Juvenile Judge's testimony, to know with certainty what the basis was for the finding of delinquency. The Juvenile Court Judge thought that the phone calls "amount[ed] to disturbing the peace"[6] (R. 61) but he also considered that Gerald was "habitually involved in immoral matters" (*Ibid.*).[7] He testified that there was "Probably another ground, too" (R. 73).

As stated by Judge McGhee, the finding of juvenile delinquency was based on "the boy's statements" (R. 76) and upon the admission of Gerald Gault (R. 65) as to the use of lewd language and on facts not contained in the juvenile file, i.e., a referral report in the probation file dated July 2, 1962, that Gerald had stolen a baseball glove. On this report Judge McGhee had based his finding that the boy was delinquent because "habitually involved in immoral matters" even though the report was never followed up, no accusation was made, and no hearing held "because of lack of material foundation" (R. 61, 62). The report, and the fact that the judge relied on it, was not brought to appellants' knowledge until August 17, 1964, at the habeas corpus hearing (R. 71-72).

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[6] Thereby bringing the boy within §8-201(6)(a).

[7] Thereby bringing the boy within §8-201(6)(d).

No warning about the possible consequences of the charges were given to appellants by the probation officer (R. 17, 35, 54). Judge McGhee stated that he gave the usual warning in February and "reminded" the parents of the February admonition on June 9th (R. 66).

Summary of Argument

I.

Juvenile courts developed out of a desire to treat wayward youths as a prudent parent treats his child—with concern for the individuality of each person, the causes of his acts, and the means to rehabilitate him to be a useful citizen. This concept of the "parens patriae" led, however, to a court system in which traditional legal safeguards were dispensed with in determining whether a child was delinquent. The barter of due process for individualized treatment has cost juveniles dearly, leading this Court recently to state that "there is evidence . . . that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent* v. *United States*, 383 U.S. 541, 555-56 (1966).

II.

The Arizona Juvenile Code, and the proceedings taken under it in this case, lacked the fundamental procedural protections that comprise due process of law. This deprivation of rights cannot be justified. First, the "parens patriae" notion is no substitute for the fairness that the juvenile is entitled to when his vital interests are at stake. Further, there is no substance to any contention to the

effect that a juvenile proceeding is "civil" and not "criminal" and dispenses "treatment" rather than "punishment". Apart from the fact that the rehabilitative ideal is equally present in the conventional criminal law, the accused juvenile delinquent stands to lose as much of his liberty, and sometimes more, than the adult charged with a comparable offense and prosecuted in the criminal courts. The interrelationship between Arizona juvenile court actions and criminal prosecutions further points up the weakness of the suggestion that juvenile proceedings need not provide due process of law. Impressed by these considerations, state and federal courts, draftsmen of modern juvenile court acts, and scholarly commentators all evince a growing recognition that there are compelling reasons of fairness to provide young people with basic procedural protections in juvenile court.

A.

The first essential of due process, where an individual's liberty is in jeopardy, is that he be clearly informed of the nature of the charge against him so that he can decide on a course of action and prepare his defense. Here Gerald Gault was not properly advised of his acts complained of, the statute or applicable rule of law such acts were alleged to violate, or the possible consequences of a finding against him. In these circumstances, the juvenile court's decision to deprive him of six years of liberty violated his constitutional rights.

B.

The denial of the right to counsel in this case also vitiated the proceedings. The decision below on this point flies in the face of principles painstakingly elaborated by this Court

over many years. A juvenile proceeding involving a determination of delinquency carries with it sufficient social stigma and danger of deprivation of liberty so that there is no less need for the assistance of counsel there than in criminal cases, where it has been recognized as a fundamental constitutional right. *Powell* v. *Alabama*, 287 U.S. 45 (1932); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963). Legal counsel is particularly vital in juvenile proceedings because of the immaturity of the accused delinquent, the uncertainty of the rights possessed by the accused, the fact that many juvenile judges are laymen or part-time, and the wide discretion of juvenile courts in dealing with young persons adjudged delinquent.

C.

This court has unanimously held that the Sixth Amendment guarantee of confrontation and cross-examination is an integral part of due process because without them there can be no fair or reliable determination of truth. Regardless of whether juvenile proceedings are denominated criminal or civil, these rights must be available. Surely a juvenile proceeding in which the loss of liberty is at stake involves interests as great as those involved in adjudicatory administrative proceedings, where confrontation and cross-examination have been held to be constitutionally mandated. Here Gerald Gault was adjudged a delinquent without any consideration of the testimony of the woman alleged to have received the obscene telephone call. The confusing testimony of others concerning what actually happened and whether Gerald Gault was involved accentuates the error of the notion that an individual can be deprived of liberty without the trier of fact hearing the testimony of the alleged victim.

D.

Gerald Gault was found to have committed a crime under the law of Arizona and his commitment by the court rested in part on that finding. There is no dispute that decisive admissions of elements of this offense were elicited from him by the juvenile court, which gave him no advice that he did not have to testify. Under familiar principles, the privilege against self-incrimination can be claimed "in any proceeding, be it criminal or civil, administrative or judicial, investigative or adjudicatory." *Murphy* v. *Waterfront Commission,* 378 U.S. 52, 94 (1964). The relevant inquiry is whether the witness may in any way incriminate himself by testifying or making a statement. Under the law of Arizona, Gerald Gault ran the risk when he testified of furnishing evidence which could be used against him in a criminal prosecution. In these circumstances, the State was required either to afford him the privilege against self-incrimination or grant him immunity commensurate with the risk. It did neither, in plain violation of the Constitution.

E.

The State's failure to provide a right of appellate review of the juvenile court decision or a right to a transcript of the proceedings in the juvenile court constitutes a departure from the requirements of due process of law. Although it has been said that a state is not required to provide appellate review of criminal actions, there can be no "license for arbitrary procedure." *Kent* v. *United States,* 383 U.S. 541, 553 (1966). The Arizona statutory scheme grants to the juvenile judge practically unlimited discretion in the conduct of a hearing at which individual liberty is

at stake. Such a proceeding cannot be squared with constitutional requirements of fundamental fairness unless there is opportunity for direct review, or at least collateral review on the basis of an official transcript.

ARGUMENT

I.

The historical background of procedural deficiencies in Juvenile Courts.

This case presents the important constitutional question of the extent to which certain fundamental requirements of procedural fairness guaranteed by the Due Process Clause of the Fourteenth Amendment are applicable to juvenile court proceedings. The history of juvenile courts in this country is valuable in appreciating the background and dimensions of this question. It reveals both the high purposes of the movement that led to juvenile courts and how these purposes came to be perverted in the form of proceedings—as exemplified by this case from Arizona—that lack the most elemental protections of due process.

Before the enactment of juvenile court acts, criminal prosecutions against juveniles and adults were handled identically and included the same procedural safeguards.[8] At the turn of the century, insights acquired through the development of the behavioral sciences—penology, psychiatry, psychology and social work—led to popular and

[8] See Welch, Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum, 50 Minn. L. Rev. 653, 654-55 (1966); *In Re Poff*, 135 F. Supp. 224, 225 (D. D. C. 1955). See generally Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q. 387 (1961).

professional dissatisfaction with prosecutions against children. This led to the establishment of the first juvenile court in 1899 in Cook County, Illinois (Ill. Laws, 1899, at 131). Since then, all states have provided by statute that children who are accused of acts which would violate the criminal law or who are alleged to be beyond the control of their parents—"incorrigible", "wayward", or "ungovernable"—are subject to proceedings in a juvenile or family court.[9]

Underlying all juvenile law is the concept of the state as the guardian of the child or "parens patriae". The principle is that the child who has acted wrongly should be treated by a court as a prudent parent treats his erring child, not as a criminal. In the words of an early study:

> "[T]he state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime. . . . It proposes a plan

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[9] State code provisions are compiled and compared in: Institute of Judicial Administration, Juvenile Courts-Jurisdiction (1961); Sussman, Law of Juvenile Delinquency (Rev. ed. 1959); Tompkins, In the Interest of a Child (1959) (prepared for the California Special Study Commission on Juvenile Justice); Illinois Legislative Council, Juvenile Court Proceedings in Delinquency Cases (1958) (12 selected states).

Model and Uniform legislation and standards appear in: National Probation and Parole Association (NPPA) (now the National Council on Crime and Delinquency, NCCD), Standard Juvenile Court Act (Rev. 1959), 5 NPPAJ 323 (1959); NCCD Standard Family Court Act (1959); Children's Bureau, U. S. Dept. of Health, Education and Welfare, Standards for Juvenile and Family Courts (1966); NPPA, Guides for Juvenile Court Judges (1957); see also The Interstate Compact on Juveniles: Development and Operation, 8 J. of Pub. Law 524 (1959). A recent study of the operation of these courts is contained in Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 Harv. L. Rev. 775 (1966).

> whereby he may be treated, not as a criminal, or legally charged with a crime, but as a ward of the state, to receive practically the care, custody and discipline that are accorded the neglected and dependent child, and which . . . shall approximate as nearly as may be that which should be given by its parents." [10]

In brief, the early juvenile courts emphasized the individuality of the child, the causes of his act, and the means to help him to become a useful citizen. "The problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104, 119 (1909), quoted in *People* v. *Lewis*, 260 N. Y. 171, 177, 183 N. E. 353, 355 (1932).

It was a short step from the concept of individualized justice in the treatment or rehabilitative phase of a proceeding to a greater informality in the trial itself. It was feared that the fact-finding procedures of our accusatory, adversary system of criminal trials were inimical to the establishment of the relationship between court and child which was thought necessary to his proper treatment and rehabilitation.

The consequence of this "swapping" of due process for parens patriae was that many traditional legal safeguards of criminal proceedings were dispensed with, to the in-

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[10] Report of the Committee of the Chicago Bar, 1899, quoted in Glueck, Some "Unfinished Business" in the Management of Juvenile Delinquency, 15 Syracuse L. Rev. 628, n. 2 (1964).

evitable detriment of individual rights.[11] Some courts even went so far as to insist flatly that constitutional safeguards of criminal procedure were not applicable to juvenile proceedings. *In re Holmes*, 379 Pa. 599, 603, 109 A. 2d 523, 525 (1954), cert. denied, 348 U. S. 973 (1955). In other courts the result was a host of questionable decisions. Vague allegations of anti-social behavior were sufficient to bring a child before some juvenile courts,[12] and the informality of the juvenile procedure was often used to accept uncorroborated admissions, hearsay testimony and the untested reports of social investigations.[13] The right to counsel and the right to notice of charges were sometimes dispensed with.[14] The protections against self-incrimination and double jeopardy also were rejected in some courts on

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[11] Glueck, Some "Unfinished Business" in the Management of Juvenile Delinquency, 15 Syracuse L. Rev. 628, 629 (1964). See also Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q. 387 (1961); Note, Juvenile Courts: Applicability of Constitutional Safeguards and Rules of Evidence to Proceedings, 41 Cornell L. Q. 147 (1955); Paulsen, Fairness to the Juvenile Offender, 41 Minn. 547 (1957).

[12] *In re Bentley (Harry* v. *State)*, 246 Wisc. 69, 16 N. W. 2d 390 (1944); *State ex rel. Raddue* v. *Superior Court*, 106 Wash. 619, 180 P. 875 (1919).

[13] Uncorroborated Admissions: *In the Matter of Gonzalez*, 328 S. W. 2d 475 (Tex. Ct. App. 1959); *Matter of McDonald*, 153 A. 2d 651 (D. C. Munic. Ct. App. 1959). Hearsay: *In re Holmes*, 379 Pa. 599, 109 A. 2d 523 (1954), cert. denied, 348 U. S. 973 (1955); *State ex rel. Christensen* v. *Christensen*, 119 Utah 361, 227 P. 2d 760 (1951); *Sylvester* v. *Commonwealth*, 253 Mass. 244, 148 N. E. 449 (1925).

[14] Notice of charges: *In re Duncan*, 107 N. E. 2d 256 (1951); *In re Bentley*, 246 Wis. 69, 16 N. W. 2d 390 (1944). Right to counsel: *People* v. *Dotson*, 46 Cal. 2d 891, 299 P. 2d 875 (1956); *Akers* v. *State*, 114 Ind. App. 195, 51 N. E. 2d 91 (1943); *In Interest of T. W. P.*, 184 So. 2d 507 (Fla. Ct. of App. 1966).

the ground that the juvenile proceeding is a civil rehabilitative procedure and not a criminal proceeding.[15]

This is not to say that the juvenile court movement did not lead to advances in the *treatment* of juveniles. It is rather to emphasize that the net effect of developments over the past half century was that juvenile court proceedings, which were instituted to protect the young, led in many jurisdictions to *findings* of delinquency in proceedings that conspicuously failed to protect the child. See Horwitz, *The Problem of the Quid pro Quo*, 12 Buffalo L. Rev. 528 (1963). As stated by the dissenting Judge in *In re Holmes, supra*, 379 Pa, at 615, 109 A. 2d at 530.

> The concept that the State acts as *parens patriae* is being somewhat overdone. Even if the state assumes the parental role, this assumption does not prove that, by divine omniscience, it cannot be other than just. It is not impossible for a father, or even a mother, to be unreasonable with offspring. What a child charged with crime is entitled to, is *justice*, not a *parens patriae* which in time may become a little calloused, partially cynical and somewhat over-condescending. (Emphasis in original.)

The disturbing state of affairs regarding the quality of justice meted out to young people recently received the attention of this Court in *Kent* v. *United States*, 383 U. S. 541 (1966). There, with specific reference to the gap between ideal and reality, Mr. Justice Fortas said:

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[15] Self-incrimination: *In re Holmes, supra; People* v. *Lewis*, 260 N. Y. 171, 183 N. E. 353 (1932); *In re Santillanes*, 47 N. M. 140, 138 P. 2d 503 (1943). Double Jeopardy: *People* v. *Silverstein*, 121 Cal. App. 2d 140, 262 P. 2d 656 (1953). *In re Santillanes, supra.* See generally Sussman, Juvenile Delinquency, pp. 11-16 (1955).

"While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. . . . There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." 383 U. S. at 555-56.

The remainder of this brief will try to demonstrate that the petitioner in this case, like countless other juveniles in Arizona and other jurisdictions, has in fact been receiving the "worst of both worlds" in plain derogation of the requirements of the due process clause of the Fourteenth Amendment.

II.

The Arizona juvenile proceedings failed to provide Gerald Gault with fundamental procedural protections that are required by the due process clause of the Fourteenth Amendment.

As the history summarized under Point I indicates, young persons appearing before juvenile courts throughout the country are frequently denied many of the protections accorded adults who are accused of crime. In the instant case Gerald Gault was "tried" and committed to the State Industrial School in a proceeding conducted under the Arizona Code that sharply illustrates the "procedural arbi-

trariness" (*Kent* v. *United States, supra* 383 U. S. at 555) that often characterizes juvenile courts.

The Arizona Code does not contain standards for the arrest of a child charged with a violation of law (§8-221) and, as interpreted by the Arizona Supreme Court, does not incorporate the general law of arrest (R. 96); the statute provides merely for an informal hearing in the judge's chambers (§8-229). No written transcript of the hearing is required, regardless whether the proceeding leads to a commitment or not; only a record of the name, age, place of birth of the child and names of his parents must be made. The statute does not impose any limitations on the judge with respect to the nature of evidence to be used; it does not contain a requirement for sworn testimony or cross examination of witnesses; it does not confer the privilege against self-incrimination upon the juvenile; it does not require that a transcript of the proceedings be made and makes no provision for appellate review. It also gives the judge authority to make any order for the commitment, custody or care of the child "as the child's welfare and the interest of the state require" (§8-231). No standards limit this wide discretion of the judge. He may commit a child until his majority, as in this case. He is not required to establish a relationship between the specific act of juvenile delinquency and the period of commitment; he does not have to show that the juvenile's parents are unfit to handle the child when taking a child from the custody of his parents (407 P. 2d at 769; R. 96).

The boundless discretion conferred upon the juvenile court by the Arizona Code was exercised in this case to deprive appellants of due process. This becomes clear by tracing the events that occurred prior to and during the hearing.

Gerald Gault was arrested by the sheriff, detained by probation officers without an order of court, and interrogated at length. His parents were neither notified of the arrest nor informed of its grounds. The only written notice they ever received was contained in a note Mrs. Gault received from officer Flagg on Friday, June 12th, about the continuance of Gerald's hearing "on his delinquency." The time allowed appellants to prepare their case was extremely short. The hearing itself consisted mainly of hearsay statements. No witnesses were sworn. The complainant was not called as a witness, even though appellants had requested her presence, because the judge decided that she was not necessary (R. 36). As conceded by Judge McGhee, his finding of delinquency was derived not only from the "boy's statements" as to the use of lewd language, but on his "habitual involvement in immoral matters," based on a referral report in the probation file which had never led to an accusation or hearing (R. 61). Appellants had no notice of this report and no opportunity to deny or defend against the charges.

In both juvenile hearings appellants appeared without counsel. They were neither informed of a right to counsel nor told that they would be furnished counsel in case of need (R. 35, 46-47, 59). The order of commitment taking the child from his parents for up to six years was made without investigation of the conditions in his home and without any warning that such a draconian remedy might follow. Finally, there was no transcript kept of the proceeding and no provision for appellate review of possible procedural errors or the evidentiary basis for the decision.

It is plain that in this case Arizona largely if not wholly dispensed with the basic procedural protections that are understood to comprise "due process of law." In attempting to justify this handling of Gerald Gault, the Supreme Court of Arizona adhered closely to the usual formulation (407 P. 2d at 765; R. 88-89):

> "... [J]uvenile courts do not exist to punish children for their transgressions against society. The juvenile court stands in the position of a protecting parent rather than a prosecutor. It is an effort to substitute protection and guidance for punishment, to withdraw the child from criminal jurisdiction and use social sciences regarding the study of human behaviour which permit flexibilities within the procedures. The aim of the court is to provide individualized justice for children. Whatever the formulation, the purpose is to provide authoritative treatment for those who are no longer responding to the normal restraints the child should receive at the hands of his parents. The delinquent is the child of, rather than the enemy of society and their interests coincide. . . ."

This statement reduces to two overlapping theories. The first is the "parens patriae" notion, already alluded to under Point I. The second is that the child is not involved in a criminal proceeding and is not receiving "punishment" but "treatment." Neither of these arguments, nor any other possible theory, can justify the refusal to accord Gerald Gault and other juveniles the protection of the Bill of Rights.

It has already been pointed out that although the parens patriae has roots in a genuine attempt to rehabilitate juve-

nile delinquents, what "a child charged with crime is entitled to, is *justice*, not a *parens patriae*." *In re Holmes*, *supra*, 379 Pa. at 615, 109 A. 2d at 530 (dissenting opinion). The failure to provide appellants with due process—i.e., "justice"—is the basis for the claim in this case, and it is submitted that the theoretical comforts of a surrogate parent are barren in the face of the hard realities of a proceeding in which the vital interests of a child are engaged.

These interests of the child are equally compelling in rejecting the mischievous notion that what is being meted out in juvenile proceedings is "treatment" and not "punishment." In the first place, modern criminology accords a high place to "rehabilitation" of criminals, thereby invalidating any purported distinction between juvenile and adult proceedings on this score. This Court has said

> "Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence." *Williams* v. *New York*, 337 U. S. 241, 248 (1949).

See also *Benson* v. *United States*, 332 F. 2d 288, 292 (5th Cir. 1964); Radzinowicz and Turner, A Study of Punishment I: Introductory Essay, 21 Canadian Bar Rev. 91-97 (1943); and Allen, Criminal Justice, Legal Values and the Rehabilitative Ideal, 50 J. Crim. L. C. and P. S. 226 (1959).

Even apart from the failure of the "rehabilitation" theory to justify a failure to provide juveniles with procedural protection, the plain fact is that in this case and in countless others the juvenile is forcibly removed from his home and family through the force of the state. He is confined, per-

haps until his majority, "to a building with whitewashed walls, regimented routine and institutional hours". *In re Holmes, supra,* 379 Pa. at 616, 109 A. 2d at 530 (dissenting opinion). That he is sent to a "home" or a "training school" rather than a prison does not in the least detract from the coerced loss of freedom. The child stands to lose every bit as much as an adult in a comparable situation. In fact, the child's situation may be drastically worse, as this very case demonstrates. While an adult accused of the "crime" of using obscene language over the telephone could be convicted in Arizona of a misdemeanor and sentenced to a maximum of two months imprisonment (Arizona Stats. §13-377), Gerald Gault was deprived of his liberty for up to six years (R. 82) for the very same act, even though he was not convicted of a "crime" and technically was not "punished."

The lack of substance to any purported distinction between the usual criminal prosecution and a juvenile proceeding is emphasized by the interrelationship between juvenile court actions and criminal prosecutions under the law of Arizona. As developed more fully below (pp. 51-54), the Arizona constitutional and statutory scheme for handling juveniles does not divest the criminal courts of jurisdiction. The Arizona system merely charges juvenile judges to decide in the first instance whether to "suspend criminal prosecution" or to allow such prosecutions to proceed. Not until there is an actual adjudication in the juvenile court is the young person suspected of action constituting a crime free from the possibility of prosecution.

In these circumstances, it is idle to suggest that the lax Arizona juvenile procedures relating to notice of charges, right to counsel, confrontation of witnesses, and

the rest, can be justified on the ground that juvenile court actions are not "criminal." As stated by a California court, the fact that delinquency involves the possible deprivation of liberty makes the differentiation between adult criminal proceedings and juvenile civil proceedings "'for all practical purposes . . . a legal fiction presenting a challenge to credulity and doing violence to reason." *In re Contreras,* 109 Cal. App. 2d 787, 789, 241 P. 2d 631, 633 (1952).

As the *Contreras* case suggests, there is growing recognition that "there shall be no greater diminution of the rights of a child, as safeguarded by the Constitution, than should be suffered by an adult charged with an offense equivalent to the alleged act of delinquency of the child." *Application of Johnson,* 178 F. Supp. 155, 160 (D. N. J. 1957). An increasing number of cases have held that "a juvenile is entitled to fundamental due process of law". *State* v. *Naylor,* 207 A. 2d 1, 10 (Del. 1965). See *In re Alexander,* 152 Cal. App. 2d 458, 461, 313 P. 2d 182, 184 (1957); *Brewer* v. *Commonwealth,* 283 S. W. 2d 702, 703 (Ky. 1955); *United States* v. *Morales,* 233 F. Supp. 160, 167 (D. C., Mont., 1964); *In re Contreras, supra.* The underlying basis for these holdings has been set forth in *Trimble* v. *Stone,* 187 F. Supp. 483, 485-86 (D. D. C. 1960):

> "The fact that the proceedings are to be classified as civil instead of criminal, does not, however, necessarily lead to the conclusion that constitutional safeguards do not apply. It is often dangerous to carry any proposition to its logical extreme. These proceedings have many ramifications which cannot be disposed of by denominating the proceedings as civil. Basic human

rights do not depend on nomenclature. What if the jurisdiction of the Juvenile Court were to be extended by an Act of Congress to the age of twenty-one or even twenty-five, or what if it were to be reduced to sixteen? Could it be properly said that the constitutional safeguards would be increased or diminished accordingly?

"Manifestly the Bill of Rights applies to every individual within the territorial jurisdiction of the United States, irrespective of age. The Constitution contains no age limits."

In short, there is growing recognition of the importance of providing juveniles with the protection of the Constitution.[16] As stated in *In re Poff*, 135 F. Supp. 224, 225, 227 (D. D. C. 1955), the original purpose of the juvenile court movement was "to afford the juvenile protections *in addition to those* he already possessed . . . to enlarge, *not to diminish* those protections." (Emphasis in original.)

This Court in effect recognized the constitutional dimensions of the problem in *Kent* v. *United States*, 383 U. S.

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[16] Dembitz, Ferment and Experiment in New York: Juvenile Cases in The New Family Court, 48 Cornell L. Q. 499 (1963); Ketcham, Legal Renaissance in the Juvenile Court, 60 Nw. U. L. Rev. 585 (1965); Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q., 387 (1961); Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957); Rubin, Protecting the Child in the Juvenile Court, 43 J. Crim. L. C. and P. S. 425 (1952); Welch, Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum, 50 Minn. L. Rev. 653 (1966); Beemsterboer, The Juvenile Court—Benevolence in the Star Chamber, 50 J. Crim. L. C. and P. S. 464 (1960); Skoler, Juvenile Courts and Young Lawyers, 10 The Student Law. J. 5 (Dec. 1964); Quick, Constitutional Rights in the Juvenile Court, 12 How. L. J. 76 (1966).

541 (1966). Although the Court did not reach petitioner's specific constitutional claims, it stated with respect to the determination of waiver of juvenile court jurisdiction:

> "[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons." 383 U. S. at 554.

Due process for juveniles is particularly necessary in a time of an increasing juvenile population. With full appreciation of the high stakes in these proceedings both from the standpoint of the child himself and from that of society in preventing the permanent loss of a law abiding citizen, Judge Midonick of the New York Family Court said in *In re Ronny*, 40 Misc. 2d 194, 210; 242 N. Y. S. 2d 844, 860-61 (Family Ct. 1963):

> "I can think of few worse examples to set for our children than to visit upon children what would be, if they were older, unreasonable and unconstitutional invasions of their all-too-limited privacy and rights, merely because they are young. . . . We would do well to stand solidly in behalf of children before us to avoid contamination of the fact sources and to see to it that we brook no shabby practices in fact-finding which do not comport with fair play. We must not only be fair; we must convince the child . . . that the judge, a parent image, is careful to ensure those civilized standards of conduct toward the child which we expect of the child toward organized society."[17]

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[17] This view has been supported by other judges with long experience in juvenile courts. "The example of a juvenile court that

Modern juvenile and family court acts have also been responsive to the fundamental unfairness of subjecting young people to proceedings in which their liberty is at stake without the procedural protections accorded adults in criminal trials. The Standard Juvenile Court Act, as well as the California Juvenile Court Law and the New York Family Court Act, incorporate basic due process requirements, such as the rights to counsel, a record of the proceeding and appeal.[18] The new 1966 Standards for Juvenile and Family Courts published by the Children's Bureau of the Department of Health, Education, and Welfare contain express minimum requirements "as an essential part of individualized justice" (p. 7) in juvenile courts with regard to the right to notice of charges, confrontation and cross-examination of witnesses, written findings of fact, to a record of the hearing, right to counsel and appeal. The HEW Standards state (p. 8):

> "Certain procedural safeguards must be established for the protection of the rights of parents and children. Although parties in these proceedings may seldom make use of such safeguards, their availability is none the less important. They are required by due process

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operates under the restraint of due process of law . . . may renew in our children the respect for law courts and the judicial process which is said to be on the decline." Ketcham, Legal Renaissance in the Juvenile Court, 60 Nw. U. L. Rev. 585, 595 (1965).

[18] NPPA, Standard Juvenile Court Act (Rev. 1959); Cal. Welfare and Institutions Code §§500-914, 1961; N. Y. Family Court Act, 1962. §711 of the N. Y. Family Court Act provides:

> "The purpose of this article is to provide a due process of law (a) for considering a claim that a person is a juvenile delinquent or a person in need of supervision and (b) for devising an appropriate order of disposition for any person adjudged a juvenile delinquent or in need of supervision."

of law and are important not only for the protection of rights but also to help insure that the decisions affecting the social planning for children are based on sound legal procedure and will not be disturbed at a later date on the basis that rights were denied."

There are, in sum, compelling reasons of fairness and authority to provide young people with fundamental procedural protections in juvenile court. Accordingly, this Court should rule that appellants were denied due process of law by the failure of Arizona to provide the basic elements of procedural fairness in this juvenile proceeding.[19]

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[19] Absence of procedural safeguards affects not only the reliability of juvenile proceedings but permits arbitrary disposition of young people who will not "cooperate" or who are involved in unpopular social movements. Juveniles, for example, have comprised a large proportion of those who in the past decade have peacefully demonstrated for their civil rights and have been unlawfully arrested for asserting constitutionally protected rights. The treatment accorded these minor Negroes in juvenile courts demonstrates the capacity of juvenile courts to punish for reasons totally unrelated to their individual welfare. In one of the few studies of the subject, the United States Civil Rights Commission concluded that ". . . local authorities used the broad definition afforded them by the absence of safeguards [in juvenile proceedings] to impose excessively harsh treatment on juveniles." U. S. Comm'n on Civil Rights Report, Law Enforcement, 1965, pp. 80-83.

The place the Commission studied was Americus, Georgia where:

> "Approximately 125 juveniles were arrested during the Americus demonstrations, and their cases disposed of in a unique manner. Some of them were released from jail upon payment of a jail fee of $23.50, plus $2 per day for food. These fees were paid by parents who agreed to send their children to relatives living in the country. No court hearing was held in these cases; of those juveniles who appeared in court (approximately 75% of those arrested) about 50 were sentenced to the State Juvenile Detention Home and placed on probation on the condition that they would not associate with certain leaders of civil rights organizations in Americus.
>
> "Many juveniles arrested in Americus were detained for long periods of time without bail or hearing. The juvenile

The specific guarantees of the Bill of Rights denied appellants will now be considered with particularity.

A. Notice of Charges and Hearing.

The first essential of due process, where an individual's liberty is in jeopardy, is that he be clearly informed of the nature of the charge against him so that he can prepare his defense. Further, he must be given adequate time and opportunity after notice of charges to decide on his course of action and to prepare that defense. *Cole* v. *Arkansas*, 333 U. S. 196 (1948). See also *Hovey* v. *Elliott*, 167 U. S. 409 (1897); *Powell* v. *Alabama*, 287 U. S. 45 (1932); *In re Oliver*, 333 U. S. 257 (1948); *In re Murchison*, 349 U. S. 133 (1955); *Williams* v. *New York*, 337 U. S. 241 (1949).

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court judge explained the reason for this in Federal court: "If one is bad enough to keep locked up, they're not entitled to bail; and if they're not bad enough, there's no use to make them make bond." *Id.* at pp. 81-82.

See also Meltsner, "Southern Appellate Courts: A Dead End" in Friedman (ed.), Southern Justice 152 (1965).

Although the reported decisions are few, petitions to adjudge minors delinquent because of peaceful and lawful civil rights activity has been a common response in southern states. Ten minor Negroes were arrested in Montgomery, Alabama on April 15, 1965, as they were peacefully picketing a store in downtown Montgomery and objecting to its discriminatory hiring practices. They were prosecuted under an ordinance which stated that "not more than six persons shall demonstrate at any one time before the same place of business or public facility." Although their conduct was orderly in every respect attempts were made to declare the children delinquents. A federal district judge found that they were merely exercising a constitutionally protected right of free speech and assembly and dismissed the charges. *In re Wright*, 251 F. Supp. 880 (M. D. Ala. 1965). See also *Florence* v. *Meyers*, 9 Race Rel. L. R. 44 (M. D. Fla. 1964) (order to arrest juveniles on sight unlawful; injunction granted); *Griffin* v. *Hay*, 10 Race Rel. L. Re. 111 (E. D. Va. 1965) (order that juveniles refrain from protected activity unlawful; injunction granted). See generally Starrs, A Sense of Irony in Juvenile Courts, 1 Harv. Civil Rights—Civil Liberties L. Rev. 129 (1966).

In *Cole*, this Court spelled out the vital nature of notice:

> "No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge . . . are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." 333 U. S. at 201.

Notice, to be fully effective, must contain at least three ingredients: (1) it must state what acts are complained of; (2) it must state what statute or applicable rule of law such acts violate; and (3) it must give some indication of the consequences of a finding against the accused. All of these were absent in the proceedings below.

No official notice of the nature of the imminent hearings was given to appellants. In the most casual fashion, and only after she requested the information, was Mrs. Gault orally informed by officer Flagg on the night of June 8th that Gerald had been detained that afternoon and that a hearing would be held the very next day (R. 29). The only written notice of any kind appellants ever received was contained in a handwritten note on blank paper addressed to Mrs. Gault and received from probation officer Flagg on Friday, June 12th. It merely stated that Judge McGhee had set Monday, June 15th, as the time "for further hearings on Gerald's delinquency" (R. 78).

No effective notice of the underlying basis for the charge of delinquency was given to appellants. This worked severely to appellants' prejudice. Judge McGhee testified that he based his adjudication of delinquency in part on a finding that Gerald had violated Ariz. Rev. Stats. §13-377, the obscene language provision of the Arizona Criminal

Code[20] (R. 61-63). Yet this statute was never cited to appellants.

Indeed, the petition filed with the court on June 9th by probation officer Flagg recited only that he was informed and believed that "said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare" (R. 80).[21] But even this totally inadequate notice of the basis of the proceedings was not given to appellants. They never even saw the petition on which the adjudication of the delinquency of their son was based until after the decision had been made.[22]

Thus appellants' attention was never called to any statute or statutory language which might have given them

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[20] Section 13-377 provides: "A person who, in the presence or hearing of any woman or child, or in a public place, uses vulgar, abusive or obscene language, is guilty of a misdemeanor punishable by a fine of not less than five nor more than fifty dollars, or by imprisonment in the county jail for not more than two months."

[21] The petition gave no indication that an adjudication of delinquency was sought under Section 8-201-6 (a) of the Arizona Statutes, which defines "delinquent child" as a "child who has violated a law of the state or an ordinance or regulation of a political subdivision thereof." Nevertheless, Judge McGhee testified that this provision formed part of the bases for his decision. The Arizona statute (§8-222) provides that such a petition, containing a general allegation of delinquency (without stating the facts supporting the allegations), is sufficient, but the clear trend of current legislation is to require specificity in such pleadings which are jurisdictional prerequisites to juvenile court action. Cf. N. Y. Family Ct. Act, Sec. 731; Cal. Welfare and Institutions Code, Secs. 653, 656; Natl. Probation and Parole Assoc., Standard Juvenile Court Act, Sec. 12.

[22] The Arizona court appears to have held that *in the future*, a copy of this petition must be given to the infant and his parents (407 P. 2d at 767; R. 92). The failure even to serve the conclusory petition in this case on appellants points up the procedural unfairness to which they were subjected.

some guidance as to what the charge of delinquency was based on, or how to prepare a legal defense to it, or even how to decide intelligently whether to contest it at all. Nothing brought home to them the advisability of consulting with or retaining counsel, or impressed on them the potential seriousness of the proceedings for their son as evidenced by the drastic sanction later imposed by the court.

Even the minimal standards required by the Arizona statute with regard to notice of delinquency charges as interpreted by the Arizona Court, i.e., that it is sufficient if the court advises the parents no later than the hearing itself about "the facts involved in the case" (407 P. 2d at 767; R. 92), were not satisfied in this case. As stated by Judge McGhee, his finding of juvenile delinquency was based not only on the boy's use of lewd language (R. 61), but also on the boy's "habitual involvement in immoral matters," based on a referral report in the probation file which had never led to an accusation or hearing (*Ibid.*). The parents never had notice of this report, even at the hearings held in this case, and had no opportunity to deny those charges or defend against them. As to this basis for the adjudication of delinquency, there was simply no notice and no opportunity to be heard at all.

Finally, the time allowed to appellants to prepare their case was extremely short. For the first hearing from 8 o'clock at night until 3 o'clock the next day; for the second hearing from Friday afternoon until Monday morning at 11 o'clock. The Arizona court contented itself with adopting the rule that "If the charges are denied, they [the infant and his parents] must be given a reasonable time to prepare" (407 P. 2d at 767; R. 92). The court failed to recognize that reasonable time is necessary not

merely to prepare denials and defenses but to decide whether to deny or defend at all. It was unfair in this case, in the scanty time afforded them before the hearings, to make an intelligent decision on how best to proceed in their son's interest, especially in the absence of the advice of counsel.

The Arizona court's interpretation of adequate notice does not satisfy due process. As long as the specific allegations on which the charges are based are not communicated to the infant and his parents in writing before the hearing, there is no possibility of determining intelligently whether to admit or contest the charges. A reasonable time to prepare and contest the charges is required after full notice and opportunity for appraisal of all facts.

This particular requirement of due process is especially vital in juvenile proceedings. In the words of one commentator,

> "As of constitutional right . . . a child brought before a juvenile court is entitled to a clear statement of the nature and cause of the proceedings against him so that he can prepare his defense. Since many children will be unable to comprehend the accusation, this right must, of necessity, belong also to the child's parents or guardians." Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q. 387, 395 (1961).[22]

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[22] See also Paulsen, *op. cit.* at 557; Guidebook for Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency, p. 10 and Standards for Juvenile and Family Courts, prepared by the U. S. Department of Health, Education and Welfare, 1966; *Application of Johnson*, 178 F. Supp. 155 (D. N. J. 1957); *In re Florance*, 47 Cal. 2d 25, 300 P. 2d 825 (1956); *In re Creely*, 70 Cal. App. 2d 186, 190, 160 P. 2d 870, 872 (1945); *In re Coyle*, 122 Ind. App. 217, 101 N. E. 2d 192

B. The Right to Counsel.

In both juvenile hearings appellants and their son appeared without counsel. Neither appellants nor their son were informed that they had a right to counsel or that they would be provided with counsel in case of need. The Arizona court stated that "parents of an infant cannot be denied representation by counsel of their choosing" but nevertheless went on to hold that due process does not require "that an infant have a right to counsel" (407 P. 2d at 767; R. 92-93).

The denial of the right of counsel in this case is inconsistent with minimal standards of procedural fairness. It denies the most basic procedural right, without which all other procedures in juvenile courts and all other rights ostensibly given in such proceedings are unsubstantial and incapable of effective implementation.

The decision below on this point also flies in the face of principles painstakingly and deliberately elaborated by this Court over many years. *Powell* v. *Alabama*, 287 U. S. 45 (1932) and *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), have established that the right to counsel in criminal proceedings is an essential part of the Fourteenth Amendment's due process clause. Together they also establish that no distinction may constitutionally be drawn between the right to appear by retained counsel and the right to have counsel appointed in criminal proceedings.

(1951); *Petition of O'Leary*, 325 Mass. 179, 182, 89 N. E. 2d 769, 771 (1950); *State ex rel. Cave* v. *Tincher*, 258 Mo. 1, 166 S. W. 1028 (1914); *State* v. *Andersen*, 159 Neb. 601, 68 N. W. 2d 146 (1955); *In re Roth*, 158 Neb. 789, 64 N. W. 2d 799 (1954); *In re Poulin*, 100 N. H. 458, 459, 125 A. 2d 672, 673 (1957); *Matter of Solberg*, 52 N. D. 518, 203 N. W. 898 (1925); *Pettit* v. *Engelking*, 260 S. W. 2d 613 (Tex. Civ. App. 1953).

". . . [I]n our adversary system of criminal justice," the Court said in *Gideon*, "any person hailed into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." 372 U. S. at 344.

Even if juvenile proceedings are denominated "civil" in nature, the fact that a juvenile may be deprived of his liberty through an adjudicatory process in which the aid of counsel would be indispensable to him requires the application of the *Powell* and *Gideon* principles in such proceedings.

Just last term in *Kent* v. *United States*, 383 U. S. 541 (1966), the Court held that assistance of counsel in the "critically important" determination of waiver of jurisdiction by a juvenile court is essential to the proper administration of justice. Indeed, this Court in *Kent*, explicitly approved *Black* v. *United States*, 355 F. 2d 104 (D. C. Cir. 1965), and *Shioutakon* v. *District of Columbia*, 236 F. 2d 666 (D. C. Cir. 1956), which had gone further and "held that effective assistance of counsel in juvenile court proceedings is essential." 383 U. S. at 558. Although these cases did not involve the Fourteenth Amendment directly, since they all arose in the District of Columbia, the considerations upon which they are based apply as well to juvenile proceedings in state courts.[24]

A juvenile proceeding involving a determination of delinquency carries with it sufficient social stigma and danger of deprivation of liberty that it must be considered

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[24] In *Kent*, the Court did not involve itself only in a problem of statutory construction. The decision explicitly addressed itself to "the basic requirements of *due process* and fairness, as well as compliance with the statutory requirement of a 'full investigation.'" 383 U. S. at 553.

a "critical stage" in the same sense as that term was used not only in *Kent*, but also in *Hamilton* v. *Alabama*, 368 U. S. 52 (1961), and *White* v. *Maryland*, 373 U. S. 59 (1963), which required appointment of counsel in adult criminal proceedings prior to the trial itself.[25]

White, *Hamilton*, and *Miranda* related not to the trial stage but to stages in the criminal process prior to trial. By contrast, the issue in the case at bar is whether due process requires the assistance of counsel at the trial itself, a stage of the juvenile process, needless to say, which is not merely "critical," but its very essence. It is the central fact-finding inquiry, where the determination is made whether the accused juvenile committed the acts charged. The resolution of this inquiry determines whether the juvenile will be denominated a juvenile delinquent and possibly deprived of his liberty.[26]

The decision whether the due process clause of the Fourteenth Amendment requires the assistance of counsel in juvenile fact-finding proceedings requires essentially the same determination made in *Gideon* that counsel is required in an adult criminal trial—the proceeding whose purpose and function, i.e., to find the facts, is identical with the adjudicatory hearing stage in juvenile proceedings.[27]

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[25] Similarly, in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), the right to counsel was recognized in the stage of custodial interrogation in order to insure the protection of the Fifth Amendment privilege against self-incrimination. 384 U. S. at 467.

[26] Since an adjudication of delinquency can also, as it did in this case, deprive parents of the custody of their child, the familial relationship suffers impairment. That relationship too is a substantial interest of the person which deserves the protection against arbitrary abridgement afforded by the right to counsel.

[27] The fact that the finder of facts may be a jury in one case, and a judge in the other, is of course irrelevant. Waiver of a jury

The decision in *Gideon* turned on the indispensable role performed by counsel in the fact-finding process. This Court quoted at length from *Powell* v. *Alabama*, 287 U. S. 45, 68-69 (1932), to describe that role:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

This Court has also recognized in other cases the critical role played by counsel. "[E]ven in the most routine-appearing proceedings the assistance of able counsel may be of inestimable value." *Reynolds* v. *Cochran*, 365 U. S. 525, 532-533 (1961). "[T]he labyrinth of the law is, or may be too intricate for the layman to master." *Chewning* v.

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trial in adult criminal proceedings has no bearing whatever on the right to counsel requirement, any more than it does on the other due process requirements of a fair trial such as fair notice, confrontation and cross-examination, and the right to the protection of the privilege against self-incrimination.

Cunningham, 368 U. S. 443, 446 (1962). See also *Williams* v. *Kaiser*, 323 U. S. 471 (1945).[28]

To say that the juvenile judge can fully protect the accused juvenile's interests is no more true in juvenile proceedings than in adult proceedings, no matter how deliberately the judge may discharge his duty as the embodiment of the *parens patriae*. As this Court said in *Powell* v. *Alabama*, *supra*, 287 U. S. at 61, although the judge may see to it that the accused "be dealt with justly and fairly," he cannot "investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional." Indeed, there is far less warrant to rely on a judiciary, one-fifth of whose members are not even lawyers and more than half of whom devote less than one-fourth of their time to juvenile and family matters.[29]

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[28] As previously pointed out, the adjudication of Gerald Gault's delinquency rested in part on the finding that he had violated a section of the Arizona Criminal Code, §13-377, and was thus a "delinquent child" under §8-201-6(a) as having violated a law of the state. Some difficult and debatable problems arose in this case, as they commonly do in criminal prosecutions—for example, was the language allegedly used by the boys "obscene" within the meaning of the Arizona obscene language statute, and could Gerald Gault be found to be an aider and abettor of the other boy, who apparently spoke all or the greater part of the words in question? These are hardly questions with which a layman, much less a fifteen-year old juvenile, can be expected to grapple unassisted. That they never actually were raised during Gerald's hearings—although they are obvious on the face of the record—is plainly attributable to the absence of counsel.

[29] Biographical Data Survey of Juvenile Court Judges, George Washington University, Center of Behavioral Sciences, 10, 21 (1964). McCune & Skoler, Juvenile Court Judges in the United States, 11 Crime and Delinquency 121 (1965), puts the figure as one quarter non-lawyers.

The majority of legal writers,[30] federal and state court decisions,[31] and modern juvenile codes, such as in California and New York,[32] have taken the position that the right of a child and his parents to the assistance of counsel in a juvenile proceeding is founded in due process. Following this trend, the Supreme Court of Mississippi, in *Interest of Long*, 184 So. 2d 861, 862 (1966) recently ruled:

> "Where a minor is charged with being a delinquent and is subject to being deprived of his liberty, minor and parent should be advised by the court in delinquency proceedings that they are entitled to legal representation."

Mr. Schinitsky, *op. cit.* footnote 30, 17 The Record at p. 22, offers an example (drawn from a survey of the experience in the New York Children's Court prior to adoption of that state's new Family Court Act) of the tangible difficulties confronting a juvenile court judge where the juvenile is unrepresented by counsel:

> "As already stated, in 92% of the Children's Court hearings, counsel is not present to participate in its proceedings. This means the judge must examine all witnesses. To the conscientious judge this is a physi-

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[30] Ketcham, Legal Renaissance in the Juvenile Court, 60 Nw. U. L. Rev. 585, 589, 593; Paulsen, *op. cit.* at 568; Antieau, *op. cit.* at 404; Schinitsky, The Role of the Lawyer in Children's Court, The Record (The Association of the Bar of the City of New York), Vol. 17, No. 1, January 1962, pp. 10-26.

[31] *In re Poff*, 135 F. Supp. 224 (D. D. C. 1955); *Shioutakon* v. *District of Columbia, supra; Black* v. *United States, supra.*

[32] Cal. Welf. and Inst. Code, Sec. 679; N. Y. Family Ct. Act, Sec. 241, 741; Nat. Prob. and Parole Assoc., Standard Juvenile Court Act, Sec. 19.

cally and mentally exhausting task when it is repeated ten or fifteen times a day. Unfamiliar with the case until the hearing is commenced and with only the petition before it, the Court must grope and seek through its questioning a full and complete factual picture so that its decision can be right and just. Quite often the task is made more difficult by a language difficulty, the limited intelligence of witnesses or respondents and the reticence or fear of the children involved. One such judge remarked to the writer, after extensive questioning in a delinquency hearing and a dismissal of the petition, that it was sheer luck that she had asked the question which when answered placed an entirely different light on the case. Such a question would have most assuredly been propounded had there been an attorney-client relationship instead of the court-respondent one. The margin of error in an adjudication is enlarged when the judge is neither dedicated, patient nor an experienced examiner.

When a respondent denies the allegations in a petition, the only means of testing the truth of the petitioner's story is by subjecting it to the light of cross examination. Cross examination is not the haphazard pointless propounding of questions. To the experienced examiner it is a questioning based upon a foundation of facts obtained from consultation with his client.

To say that the Children's Court judge, dedicated or otherwise, can represent both petitioner and respondent in a disputed issue is unrealistic. The principal function of a presiding judge during the course of a trial is to conduct it in a fair and impartial manner.

> If compelled to take on the roles of prosecutor and defense attorney in addition, there may be the human tendency at times for him to overzealously associate himself with one of the added roles to the detriment of his impartiality."

To the argument made by some judges, social workers and lawyers that the introduction of lawyers into juvenile proceedings would make the proceedings legalistic, overtechnical and argumentative, would prolong the hearings, create a chaos of crowded dockets, and introduce dilatory tactics with dismissal of the charges uppermost in the defense lawyer's mind, Mr. Schinitsky replied (*Id.* at p. 24):

> "The desire for a smoothly operating court should not be used as an argument to deprive those accused of the right to determine for themselves their need for counsel. An essential function of the court is to establish an atmosphere of fairness in its dealings with those persons appearing before it. Vital to the creation of this atmosphere is that an accused parent or child, without funds, know they may have counsel to guide them through their difficulty."

The study made by the U. S. Department of Health, Education & Welfare in cooperation with the National Council on Crime and Delinquency and the National Council of Juvenile Court Judges has likewise concluded that:

> "As a component part of a fair hearing required by due process guaranteed under the 14th Amendment, notice of the right to counsel should be required at all hearings and counsel provided upon request when the

family is financially unable to employ counsel." U. S. Department of Health, Education and Welfare, Children's Bureau, Standards for Juvenile and Family Courts, *op. cit., supra,* p. 57.

The need for counsel in juvenile court proceedings such as those in the present case is accentuated because of the wide discretion of the juvenile courts of Arizona in dealing with juveniles they have adjudicated delinquent. The authority of the court over a delinquent child is to "make such order for the commitment, custody and care of the child as the child's welfare and the interests of the state require." §8-231. The court has no less than 10 statutorily approved alternatives open to it for the disposition of delinquents. Ibid. The aid of a lawyer may be indispensable to child, parents, and court in determining the appropriate treatment of the child; indeed the Arizona court itself recognized this, but, paradoxically, concluded nonetheless that allowing the assistance of counsel to a child is a matter for judicial discretion, and not a due process right (407 P. 2d at 767; R. 93).

Finally, it goes almost without saying that if we are correct in our contentions that other traditional safeguards of the criminal law should be applicable in juvenile court proceedings, such as fair notice of charges and the rights of confrontation and cross-examination, the aid of counsel is also indispensable to effectuate those rights. Only an attorney can enable an accused juvenile to assert such other procedural rights as he may have. Conversely, even if it were to be held that juvenile court proceedings can constitutionally be conducted with a procedural informality impermissible in adult criminal proceedings, the assistance of counsel becomes all the more essential. It

then may be the only way to keep the adjudicatory hearing in the juvenile court from becoming a sham and a mere rubber stamp for the charges made against the juvenile.[33]

C. Confrontation and Cross-examination.

In *Pointer* v. *Texas*, 380 U. S. 400 (1965), this Court unanimously held that the Sixth Amendment guarantee of

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[33] Mrs. Gault's statement in the habeas corpus proceeding that she knew that she could have appeared with counsel at the juvenile hearing (R. 40) for a number of reasons cannot be considered an intelligent waiver of either the child's or appellants' own constitutional right to counsel under *Carnley* v. *Cochran*, 369 U. S. 506 (1962), and *Fay* v. *Noia*, 372 U. S. 391 (1963): (1) The Arizona court merely found that the Gaults "knew of their right to counsel." 407 P. 2d at 763 (R. 85). At most, therefore, the Gaults could have waived only their right to appear by retained counsel. But we are contending that there is also a due process right to appointed counsel in these proceedings. This right could not have been waived, since the Gaults were never told they had it and indeed the Arizona court held that it does not recognize such a right. Therefore there could be "no intentional relinquishment or abandonment of a known right" by appellants, *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938). (2) As we have shown, appellants had not received notice of the nature and the breadth of the charges against their son which apparently included, besides the allegedly obscene telephone call, being "habitually involved in immoral matters"; they had no way to evaluate their need for an attorney; (3) the judge's favorable comments about appellants' son (R. 66) and his inconclusive answer after the first hearing to the question whether Gerald would be committed (R. 31) gave them a false sense of security prior to the second hearing and the judge's decision to commit their son to the State Industrial School without further warning or investigation of their home situation; (4) since appellants had been told by Judge McGhee that they had no right to have the complaining witness Mrs. Cook present to testify at the hearings (R. 65-66), it was understandably difficult for them to appreciate how an attorney might assist them; if, as we contend, the right of confrontation and cross-examination should have been afforded them, they would be entitled to consider their need for an attorney on the basis of full knowledge of their legal rights and could not be held to have waived an attorney's assistance without such knowledge. Cf. *Von Moltke* v. *Gillies*, 332 U. S. 708 (1948).

confrontation and cross-examination applies in State prosecutions under the due process clause of the Fourteenth Amendment. In reaching that result, the Court recognized the indispensable role played by confrontation and cross-examination "in exposing falsehood and bringing out the truth." 380 U. S. at 404. Few rights are more central to the idea of fair judicial proceedings:

> ". . . [T]he right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." 380 U. S. at 405.

The requirement of confrontation and cross-examination is one of the most vital and lasting contributions of Anglo-American law to the attainment of a reliable fact-finding proceeding. See McKay, The Right of Confrontation, 1959 Wash. U. L. Q. 122, 123-25. As Professor Wigmore has said:

> "[T]hat the judge shall have the *power* to commit to long detention any person without giving the person *any opportunity to hear the substance of the testimony against him,* is fundamentally unsound and practically dangerous." 5 Wigmore, Evidence §1400 at 145 (3d ed., 1940). (Emphasis in original.)

In Wigmore's famous statement:

> "For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the con-

viction that no statement (except by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience . . . [*I*]*t is beyond doubt the greatest legal engine ever invented for the discovery of truth.*" 5 Wigmore, Evidence §1367 at 28-29 (3d ed. 1940). (Emphasis added.)

The rule is clear: absent confrontation and cross-examination there can be no fair or reliable determination of truth sufficient to comply with the requirements of due process.

It cannot seriously be contended that the right of confrontation and cross-examination is applicable only in a criminal proceeding as traditionally defined. Regardless of whether juvenile proceedings are denominated criminal or civil in nature, the result must be the same, for this Court has clearly held that the right of confrontation and cross-examination applies not only in criminal cases, but to adjudicatory administrative proceedings as well. *Greene* v. *McElroy*, 360 U. S. 474 (1959); *Willner* v. *Committee on Character & Fitness*, 373 U. S. 96 (1963); *Williams* v. *Zuckert*, 371 U. S. 531 (1963) (certiorari dismissed on grounds that petitioner failed to comply with procedure for exercising right to confront witnesses). The rationale of *Greene* demonstrates the necessity for broad application of the confrontation and cross-examination rule:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case

must be disclosed to the individual so that he has an opportunity to show that it is untrue. . . . We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. . . . This Court has been zealous to protect these rights from erosion . . . not only in criminal cases . . . but also in all types of cases where administrative and regulatory actions were under scrutiny." 360 U. S. at 496-97 (citations omitted).

Furthermore, since the right to confront and cross-examine is essential to the fairness of any judicial proceeding, such right should be available even in a proceeding deemed to be civil in nature. See McKay, *supra* at 129. Surely a judicial order which causes the deprivation of personal liberty is at least the equivalent of governmental action which "seriously injures an individual," and results in harm at least as grievous as arbitrary denial or termination of employment.

The right of the child in juvenile proceedings to confront and cross-examine those who bear witness against him is being increasingly recognized. Numerous courts have held that this constitutional requirement is applicable and essential. *People* v. *James*, 9 N. Y. 2d 82, 211 N. Y. S. 2d 170, 172 N. E. 2d 552 (1961); *In Re Mantell*, 157 Neb. 900, 62 N. W. 2d 308, 43 A. L. R. 2d 1122 (1954); *Ballard* v. *State*, 192 S. W. 2d 329 (Tex. Civ. App. 1946); *Green* v. *State*, 123 Ind. App. 81, 108 N. E. 2d 647 (1952). In *People* v. *James*, the New York Court of Appeals ruled that,

"Elementary principles of justice would seem to require that in this situation the testimony of the mother [in this case an adversary of the child] should have been

tested by some form of cross-examination before the defendant minor was deprived of his liberty." 9 N. Y. 2d at 87, 211 N. Y. S. 2d at 174, 172 N. E. 2d at 555.

Moreover, officials who must deal daily with the problems of juvenile courts and procedures have similarly urged that the right of the child to confront and cross-examine the witnesses be accorded. See National Council on Crime and Delinquency, Standard Family Court Act, Comments to §19 (1959); Department of Health, Education and Welfare, Standards for Juvenile and Family Courts, *supra* at 7 (1966).

As the facts of this case demonstrate, the determination of delinquency in a juvenile court proceeding is of critical consequence and the need for procedures guaranteeing its reliability substantial.

The adjudication of Gerald Gault's delinquency on the basis of his alleged participation in an allegedly obscene telephone call was made without any consideration of the testimony of the recipient of the call, the complaining witness Mrs. Cook. The request of appellants for Mrs. Cook's appearance at the hearings was denied by Judge McGhee because he "didn't feel it was necessary" (R. 65-66). Indeed, Judge McGhee, the trier of fact in this case, did not even elicit Mrs. Cook's version of what had happened either in or out of the presence of appellants (R. 49, 76). It is an extraordinary procedural notion that an adjudication that a person can be deprived of his liberty without the trier of fact even hearing the testimony of the alleged victim, especially when the victim is readily ame-

nable to the processes of the court.[34] Cf. *Pointer* v. *Texas*, 380 U. S. 400 (1965). Furthermore, in the light of the testimony of probation officer Flagg to the effect that Gerald Gault had not admitted to him making any lewd or indecent remarks over the telephone but said the other boy engaged in the conversation (R. 59), the testimony of the complaining witness Mrs. Cook became even more essential. Had she been called as a witness, appellants could have attempted to show that Gerald had not used any offensive language toward her. Indeed, the court would have had a proper basis for ascertaining the exact nature of the entire incident, what in fact was said and who said it.

The following passage aptly describes the vital elements of due process which were denied to appellant:

> "In a society that long ago deliberately rejected the inquisitorial method and freely chose the alternative of confrontation and cross-examination by adversary counsel in its search for the truth, *there is neither justification nor excuse for the deprivation of liberty to a single child when supported only by the utterances not under oath of persons never subjected to courtroom confrontation and cross examination.* . . . [A] youth must be given the right to confront and cross-

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[34] The subpoena power over Mrs. Cook was available under §8-224, although appellants were never advised of it by the court. In view of their request for Mrs. Cook's appearance and the fact that they were unrepresented by counsel at the hearings, they obviously cannot be held to have waived their right of confrontation and cross-examination in this case.

examine those who would prove him a delinquent." Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q. 387, 403 (1961). (Emphasis added.)

The Arizona Court, however, took the curious view that "the relevancy of confrontation only arises where the charges are denied." (407 P. 2d at 768; R. 93.) Similarly, Judge McGhee explained that no adult witnesses were heard or sworn and he did not talk to Mrs. Cook personally, since he had the "admissions" of the boys to go on (R. 65).

This attitude turns topsy-turvy the concept of the juvenile hearing as an adjudicatory proceeding to determine the facts based on evidence. It in effect treats the hearing as an inquisition of the accused to determine whether, without hearing any of the evidence against him and without the advice of counsel, he will relieve the persons who made the charges against him of any obligation to support them by testimony. The purposes served by the right of confrontation and cross-examination—so important to the proper performance of the court's fact-finding functions—are thereby thwarted.[35]

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[35] Confrontation and cross-examination would rarely become "relevant" in the sense used by the Arizona Court under such a system. And it appears that this attitude in fact has the dangerous consequence of reducing the adjudicatory hearing to an insubstantial stage in the juvenile court process. As a former Arizona juvenile court judge has written:

"In the usual juvenile hearing, the phase devoted to determining whether an act of delinquency has occurred (any violation of criminal law or ordinance) takes the minor portion of the hearing. By reason of the pre-hearing investigation, and the frank, or semi-frank attitude of the boy and his parents the essence of the law violation involved is usually quickly grasped by all present."

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"This court always took the view that it should take as much evidence to adjudicate a child or delinquent as it would to

As we show in the next section of this Brief, this attitude also resulted in this case in the violation of Gerald Gault's privilege against self-incrimination.

D. The Privilege Against Self-Incrimination.

Gerald Gault was found to have committed a crime under the law of Arizona, a violation of Section 13-377 of the Arizona Statutes (R. 62)[36] and his commitment by the court rested in part on that finding (Ibid.).

There can be no dispute that admissions of the elements of this offense were elicited from him under questioning by the court at the hearings of June 9 and June 15. Indeed, his own statements were decisive in the court's decision to commit him. Judge McGhee described in detail his questioning of Gerald Gault at these hearings (R. 56-60). He further testified:

> "Q. Were any adult witnesses sworn and/or heard against the boy Gerald Gault? A. No. It was all, in my mind, done upon the admissions of Gerald Gault" (R. 65; see also R. 76).

No advice was given by the court to Gerald that he did not have to testify or make a statement unless he chose to

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convict a child in a criminal court. The court was of the opinion that police agencies should present just as much evidence in a juvenile court as they do in the adult court, *if it becomes necessary to do so. But this writer saw no point in spending valuable public funds in long and tedious hearings if the child admitted that verified police reports were correct.*" Molloy, *Juvenile Court—A Labyrinth of Confusion for the Lawyer*, 4 Ariz. L. Rev. 1, 9, 14 (1962) (emphasis supplied).

[36] Section 13-377, which is set forth in the Appendix, is part of the "Criminal Code" of Arizona and appears in the "Disorderly Conduct" portion of the Code in a chapter entitled "Crimes of a Common Law Nature." See also the definition of "crime" in Section 13-101.

do so. The Supreme Court of Arizona upheld this procedure, holding that the juvenile court is not required to advise a juvenile of the privilege against self-incrimination. (407 P. 2d at 767-68; R. 93.)

Under familiar principles governing the privilege against self-incrimination, this course of proceedings violated Gerald Gault's Fourteenth Amendment rights.[37] With respect to the privilege it is entirely immaterial once again whether a juvenile court proceeding is labeled criminal, civil, in the nature of *"parens patriae,"* or anything else. The law has long been settled that:

> "The privilege can be claimed in *any proceeding*, be it criminal or civil, administrative or judicial, investigatory or adjudicatory . . . it protects *any disclosures* which the witness may reasonably apprehend *could be used in a criminal prosecution or which could lead to other evidence that might be so used.*" *Murphy* v. *Waterfront Commission, supra,* 378 U. S. at 94 (concurring opinion of Mr. Justice White) (emphasis supplied).

See also *Malloy* v. *Hogan, supra,* 378 U. S. at 11; *McCarthy* v. *Arndstein,* 266 U. S. 34, 40 (1924).

The relevant inquiry in determining the applicability of the privilege therefore is not the nature of the proceeding, but whether the witness may in any way incriminate himself by testifying or making a statement. Under the law of Arizona, the interrelationship between juvenile proceedings and criminal prosecution is such that at the time he

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[37] The applicability and scope of the privilege are the same in state as in federal courts. *Malloy* v. *Hogan,* 378 U. S. 1 (1964); *Murphy* v. *Waterfront Commission,* 378 U. S. 52 (1964); *Griffin* v. *State,* 380 U. S. 609 (1965).

made his statements to the juvenile court, Gerald Gault ran the risk of furnishing evidence which could be used against him in a criminal prosecution for violation of Section 13-377.

Under these circumstances and the applicable decisions of this Court, the state was required either to afford him the privilege or grant him immunity commensurate with the risk. It did neither.[38]

The point is readily demonstrated by reference to the Arizona law governing the relationship of juvenile proceedings and criminal prosecutions. Article 6, Section 15, of the Arizona Constitution provides:

> "The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent, neglected, incorrigible or delinquent children, or children accused of crime, under the age of eighteen years. The judges shall hold examinations in chambers for all such children concerning whom proceedings are brought, in advance of any criminal prosecution of such children, and may, in their discretion, suspend criminal prosecution of such children. The powers of the judges to control such children shall be as provided by law." (See also Ariz. Rev. Stats. §§8-202; 8-228.)

It is apparent that the Arizona system for handling juveniles does not exempt them from the criminal law or divest them of legal capacity to commit crimes. The criminal law remains in full force and effect in its application

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[38] Gerald Gault's failure to claim the privilege specifically at his hearings cannot be a basis for depriving him of it, since he was without counsel throughout the proceedings. Nor can he be held to have waived his privilege, since he was never advised that he had it.

to their conduct. The constitutional and statutory scheme simply provides that judges of the superior courts, sitting as juvenile court judges, shall consider cases involving juveniles accused of crime in the first instance, to decide whether to "suspend criminal prosecution" or to allow criminal prosecution to proceed. And the Arizona courts have so held.[39]

The decision whether to suspend criminal prosecution is placed in the discretion of the juvenile courts and no standards for its exercise are prescribed by law. *Application of Vigileos,* 84 Ariz. 404, 300 P. 2d 116 (1958); *Burrows* v. *State,* 38 Ariz. 99, 111, 297 Pac. 1029 (1931). The court may refuse to suspend criminal prosecution whether the conduct charged constitutes a felony or a misdemeanor. See *Flynn* v. *Superior Court,* 414 P. 2d 438, 442 (Ariz. Ct. App. 1966).

Furthermore, even when a juvenile court holds hearings on a juvenile accused of conduct constituting a crime, as it did in the present case, its assertion of jurisdiction over the juvenile is not final until it actually makes an adjudica-

[39] *Application of Gault,* 99 Ariz. 181, 407 P. 2d 760 (1965); *Application of Vigileos,* 84 Ariz. 404, 330 P. 2d 116 (1958). As the Supreme Court of Arizona has said, the Arizona juvenile court act "affects the *treatment* and not the *capacity* of the offender." *Burrows* v. *State,* 38 Ariz. 99, 110, 297 Pac. 1029, 1034 (1931) (emphasis in original).

Chief Judge Prettyman has described the operation of a juvenile court system like that of Arizona:

> "The original-and-exclusive jurisdiction clause, coupled with the waiver clause, is merely a procedural device for putting child offenders within the remedial treatment of the Juvenile Court if it appears after investigation that such investigation is in the interest of the public and of the child. *The two courses of justice are not separate and independent systems. They are correlated parts of a single system. The Juvenile Court system is an adjunct to the general system of criminal justice.*" *Briggs* v. *United States,* 96 U. S. App. D. C. 392, 393, 226 F. 2d 350, 351 (1955) (emphasis supplied).

tion of delinquency. The filing of a petition alleging that the juvenile is delinquent, under Arizona Stat. §8-222, merely invokes the juvenile court's powers for the purpose of inquiry and investigation into how to handle the offender. But "[J]urisdiction in the Juvenile Court does not attach until there has been an adjudication based upon evidence that the child is dependent, neglected, incorrigible or delinquent." *Caruso* v. *Superior Court*, 100 Ariz. 167, 412 P. 2d 463, 467 (1966). Refusal to suspend criminal prosecution thus remains a possible outcome of the juvenile court's inquiry into the juvenile's conduct. See Molloy, *Juvenile Court—A Labyrinth of Confusion for the Lawyer*, 4 Ariz. L. Rev. 1, 11 (1962).[40]

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[40] The author, who served for several years as judge of the juvenile court for Pima County, Arizona, writes that the juvenile's cooperation with the court at the hearing by admitting his involvement may be decisive in whether the court treats him as a delinquent or refuses to suspend criminal prosecution. Judge Molloy states:

> "*The attitude of the boy involved is always a factor in determining the order of the court. If the boy leaves the court,* scornful of its processes, openly defiant of authority, and *without having made a clean breast of his involvements, the court knows the boy will soon be back.* The court also knows that delinquency rubs off on others of the same age, and a boy of this type is very apt to cause some of his acquaintances to be delinquent who in turn will infect others. *Because of this the attitude of the boy might be the final factor influencing the court to institutionalize the child, or to remand the child for criminal prosecution for the offense charged.*" *Id.* at 11. (Emphasis supplied.)

Procedures which allow so critical a determination to turn on the juvenile's willingness to make admissions of criminal conduct to the court are open to the gravest constitutional objection. Cf. *Kent* v. *United States*, 383 U. S. 541, 553-555 (1966). The pressure on the juvenile to make such admissions, whatever the truth of the matter, is greatly increased by the availability of the sanction of criminal prosecution for noncooperation. Recognition of the privilege is essential to prevent the application of this kind of pressure, with its resulting danger of distortion of the fact-finding processes of the juvenile court.

It is clear from these authorities that Gerald Gault ran the risk of self-incrimination when he was questioned at the hearings of June 9 and June 15. He was accused of conduct constituting a crime, the statements elicited from him could have led to his conviction of that crime, and he had no assurance that he was safe from criminal prosecution based on his statements.

The state did not protect him from the danger which its juvenile court procedures created. Its only gesture in that direction is Section 8-228, which provides:

> "B. The disposition of a child or of evidence given in the juvenile court shall not be admissible as evidence against the child in any proceeding in another court. . . ."

This provision is inadequate to uphold the state's disallowance of the privilege. It is too little and too late. It does not immunize the juvenile from criminal prosecution based on the matters about which he makes a statement. It does not prevent the searching out and use of other evidence obtained as a result of his statements.

All it prevents is the admission of the statements themselves in a criminal prosecution. Since *Counselman* v. *Hitchcock*, 142 U. S. 547 (1892), it has been settled that this is not a sufficient grant of immunity to justify denying the privilege.[41] As this Court said recently, "a grant

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[41] The statute which this Court held inadequate to grant immunity in *Counselman* is virtually the same as the Arizona provision. It is clear that the Arizona statute does not grant the requisite immunity. When its lawmakers wanted to grant the complete immunity necessary to compel testimony, they knew how to do so. See, e.g., Arizona Constitution, Article 2, Section 19; Ariz. Rev.

of immunity is valid only if it is coextensive with the scope of the privilege against self-incrimination." *Murphy* v. *Waterfront Commission,* 378 U. S. 52, 54 (1964).

Gerald Gault's privilege against self-incrimination was therefore violated by the juvenile court. This Court should make it clear that if a state allows the risk of self-incrimination to arise in its juvenile proceedings, it must afford the privilege to the juvenile.[42]

Stats. §§44-1660, 4-245. See *State* v. *Chitwood,* 73 Ariz. 161, 239 P. 2d 353 (1951), on rehearing, 73 Ariz. 314, 240 P. 2d 1202 (1952). The same statutory provision, which appears in the juvenile court act of Texas, was held not to grant the requisite immunity in *Dandy* v. *Wilson,* 179 S. W. 2d 269 (Tex. Sup. Ct. 1944). See also *Ex parte Tahbel,* 46 Cal. App. 755, 758-59, 189 Pac. 804, 806 (1920).

[42] In view of the framework of state law, it is unnecessary for this Court in this case to decide the question of the applicability of the privilege in a juvenile proceeding where there is no possibility of criminal prosecution of the juvenile, either because the delinquent conduct charged does not constitute a crime or because complete immunity from criminal prosecution has been given him. Even commentators who argue against allowance of the privilege in juvenile proceedings agree that if criminal prosecution is a possibility, the privilege must be recognized. See, *e.g.,* Paulsen, *Fairness to the Juvenile Offender,* 41 Minn. L. Rev. 547, 562 (1957):

> "One matter should be made clear: the propriety of freely receiving a child's testimony in a delinquency case assumes that he may not be criminally prosecuted for offenses revealed by his statements. If the youth can be turned over to the criminal courts for punishment, or if he can be punished *after* his treatment by the juvenile authorities, his privilege against self-incrimination must be carefully guarded. The common statutory provision forbidding the use of a juvenile's testimony in another proceeding is not a sufficient guarantee. The youngster must be protected against prosecution for any offense revealed by his testimony before it is fair to strip him of the right given the worst criminals." (Emphasis in original.)

Since this was a clear violation of Gerald Gault's privilege at the hearings, it is also unnecessary for this Court to decide whether the continuing process of extrajudicial interrogation of him also abridged his privilege. Suffice it to say that the record is clear

Contrary to the reasoning of the court below, recognition of the privilege does not impair "the necessary flexibility for individualized treatment." (407 P. 2d at 767.) There is ample scope for individualized treatment when the court comes to decide the proper disposition of a juvenile it has adjudged delinquent. But the adjudicatory process in juvenile court cannot be allowed to serve, however inadvertently, as a means of compelled self-incrimination.[43]

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that the admissions elicited in court were part and parcel of a continuing interrogation by probation officers using investigative techniques familiar in the criminal law, *e.g.*, interrogating Gerald Gault and his co-defendant in sequence seeking "a change of stories" and capitalizing on the boys' evident desire to shift primary responsibility by implicating each other. (See R. 47, 49, 51.)

[43] State courts have divided on the applicability of the privilege in juvenile court proceedings. Compare *Dendy* v. *Wilson, supra; Ex parte Tahbel, supra; In re Sadleir,* 97 Utah 291, 85 P. 2d 810 (1938), on rehearing, 97 Utah 313, 94 P. 2d 161 (1939) (allowing privilege), with *In re Santillanes,* 47 N. M. 140, 138 P. 2d 503 (1943); *In re Holmes,* 379 Pa. 599, 109 A. 2d 523 (1954); *State* v. *Shardell,* 107 Ohio App. 338, 153 N. E. 2d 510 (1958) (disallowing privilege). Cases denying the applicability of the privilege, however, have almost invariably followed the theory that the juvenile proceeding is not criminal in nature, without consideration of the crucial question of the interrelationship of the juvenile and criminal proceedings.

The privilege is recognized in adjudicatory hearings in the Juvenile Court of the District of Columbia, see *United States* v. *Dickerson,* 168 F. Supp. 899, 902 (D. C. 1958), *rev'd on other grounds,* 106 U. S. App. D. C. 221, 271 F. 2d 487 (1959); *In re Davis,* 83 A. 2d 590, 593 (Mun. Ct. Apps. D. C. 1951) and in juvenile proceedings in England, see Watson, The Child and the Magistrate (1965).

The trend of current scholarship and study in the field is clearly in favor of recognizing the privilege in juvenile proceedings. See *e.g.*, U. S. Department of Health, Education and Welfare, Children's Bureau, *Standards for Juvenile and Family Courts,* 49, 72 and authorities cited therein (1966); Antieau, *Constitutional Rights in Juvenile Courts,* 46 Corn. L. Q. 387, 407 (1961). New York expressly provides in its new Family Court Act that a ju-

E. Right to Appellate Review and to a Transcript of the Proceedings.

The Arizona statute's failure to provide a right of appellate review of juvenile court orders or a right to a transcript of the proceedings in the juvenile court constitutes a departure from the requirements of due process of law.[44]

Although it has been said that "a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all," *Griffin* v. *Illinois*, 351 U. S. 12, 18 (1956), this fact does not "authorize the imposition of conditions that offend the deepest presuppositions of our society." *Id.* at 22 (Frankfurter, *J.*, concurring). It can hardly be doubted that one of the "deepest presuppositions" of American law is that unbridled and absolute discretion shall rest in no judicial official. Yet the State of Arizona lodges practically unlimited discretion in the juvenile court judge, and permits him to conduct his proceedings with virtually total informality. Thus the right to review by appeal the decisions of such a juvenile court becomes extremely important. Even in a State where re-

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venile shall be advised at the commencement of any adjudicatory hearing in the Family Court that he has a right to remain silent. N. Y. Family Court Act 741(a). In effect, New York thereby has overruled by statute the holding of *People* v. *Lewis*, 260 N. Y. 171, 183 N. E. 353 (1932), that a juvenile could be required to testify in a juvenile court proceeding. *People* v. *Lewis* has been a prop on which state courts disallowing the privilege have commonly relied.

[44] The Arizona Supreme Court held flatly that "there is no right of appeal from a juvenile court order." (407 P. 2d at 764; R. 94.) The Court also held that since there is no right to an appeal, there is no right to a transcript. It left the matter of the taking of a transcript of juvenile court hearings entirely to the discretion of the juvenile courts. (*Ibid.*)

view of juvenile court proceedings is provided for, one judge was moved to comment:

> "Absolute power in the hands of a careful and just man may be a benefit, but most of our Constitutions have been adopted out of experience, with human nature as it is, and is apt to be in the future. We must minimize the chance of abuse and place limitations even upon those who have the best of purposes and the most benevolent dispositions." *People* v. *Lewis, supra,* 260 N. Y. at 182, 183 N. E. at 357 (Crane, *J.* dissenting).

Just last Term, this Court emphasized that the special concerns and interests sought to be furthered by juvenile court statutes do not justify placing the procedures employed by these courts beyond the scope of appellate scrutiny:

> "But this latitude [to determine waiver of jurisdiction] is not complete. At the outset, it assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness, as well as compliance with the statutory requirement . . ." *Kent* v. *United States, supra,* 383 U. S. at 553.

Moreover, although a statute may confer on a juvenile court a "substantial degree of discretion," it cannot grant "a license for arbitrary procedure." *Ibid.* The fact that the juvenile court functions as *parens patriae* is in no way "an invitation to procedural arbitrariness." Yet how can such prohibited exercises of discretion in the juvenile courts be corrected when the state makes no provision for

appellate review?[45] Forcing appellant to resort to the ancillary procedure afforded by habeas corpus, as in this case, is an inadequate method of meeting the problems posed by the power vested in juvenile court.[46]

This Court does not have to rule on the issue whether the right to appeal *per se* is required by the Fourteenth Amendment's due process clause in order to find that a Juvenile Code, such as Arizona's, which grants to the juvenile judge practically unlimited discretion in the conduct of a hearing constitutes "an invitation to procedural arbitrariness" if review by appeal is not provided. Since "a fair trial in a fair tribunal is a basic requirement of due process," *In re Murchison*, 349 U. S. 133, 136 (1955), the right to challenge the fairness of a juvenile court decision, i.e., the right to review on the merits, is required by due process. Absent such right, no effective examination of the arbitrariness of the decisions by the juvenile judge is possible.

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[45] Those who have prepared "model" juvenile court statutes or have formulated standards in this area have provided for appellate review as a matter of course, as well as the transcribing of the hearing. See National Council on Crime and Delinquency, Standard Family Court Act, §19, §28 (1959); Children's Bureau, Department of Health, Education and Welfare, Standards for Juvenile and Family Courts, 76, 78-79 (1966).

[46] The court in the habeas corpus hearing in the present case took the view that habeas corpus is only available in Arizona to test "jurisdictional" defects in the juvenile court proceedings. Whatever the definition of "jurisdictional" defect, is is plain from the record in the habeas corpus hearing that the scope of review is not coextensive with the errors that can be asserted on appeal. This is the usual rule. E.g., *State* v. *Logan*, 87 Fla. 348, 100 So. 173 (1924); *Harris* v. *Norris*, 188 Ga. 610, 4 S. E. 2d 840 (1939); *People ex rel. Solemon* v. *Slattery*, 39 N. Y. S. 2d 43 (Sup. Ct. 1942).

The absence of an official transcript of the original hearings, one of the basic shortcomings of this case which confronted appellants in obtaining judicial review, would also be remedied by allowing review by appeal. This is apparent from the fact that the Supreme Court of Arizona in this case justified the failure to provide for a transcript mainly by the absence of a right to appeal, reasoning that one of the main purposes of a transcript is to support an appeal. (407 P. 2d at 768, R. 94.)

Whether review of juvenile court proceedings is by appeal or habeas corpus, a transcript is indispensable. Even if this Court rules that due process does not require the right to appellate review of juvenile court proceedings as a method of controlling unchecked discretion, parties in juvenile court proceedings will nevertheless continue to be able to resort to the habeas corpus method, as did appellants here, to test the legality of the deprivation of liberty. Without an official transcript or record of the proceedings in the juvenile court, even the questionable efficacy of the habeas corpus remedy will be minimal.[47] Among the severe difficulties with such a system is the obvious problem of establishing whether there is *any* evidence justifying the finding of delinquency and the loss of personal freedom that this frequently entails. Cf. *Thompson* v. *City of Louisville*, 362 U. S. 199 (1960).

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[47] For example, there was sharp dispute at the habeas corpus hearing about whether Gerald Gault, at either of the two delinquency hearings, had admitted speaking any of the allegedly lewd words over the telephone. Mrs. Gault said that her son, at the first hearing said he had only dialed (R. 30), but Probation Officer Flagg and the Judge testified that Gerald admitted saying some of the words (R. 47, 59). On the other hand, Mrs. Gault and Mr. Flagg agreed that at the second hearing Gerald had admitted only having dialed (R. 35, 45) but the Judge insisted that Gerald had admitted making some of the allegedly obscene remarks (R. 61).

What results from a failure of the State to transcribe juvenile proceedings is the unseemly spectacle of the juvenile court judge testifying in the habeas corpus hearings to what transpired before him in the delinquency hearing, as happened here. In a similar context, this Court has ruled that:

> "... no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered." *In re Murchison*, 349 U. S. 133, 136 (1955).

The juvenile court judge, the legality of whose judicial judgment is being challenged in that very proceeding, should not be called upon to recount what transpired in the juvenile hearing over which he presided. The danger of transforming him into a witness is manifest since his own conduct and orders are in question and he may unavoidably be tempted to try to assure that his decisions are not declared void and illegal. This latent possibility of prejudice and threat to the reliability of the habeas corpus proceeding as a method of review could be easily overcome by requiring records of the juvenile hearings which would then furnish an objective basis for the determination of the habeas corpus petition.

This Court has recognized the vital nature of having a transcript in order to contest the judgment rendered. See *Griffin* v. *Illinois, supra*; *Draper* v. *Washington*, 372 U. S. 487 (1963). The essence of the injury to the petitioners in those cases was that a reviewing court's ruling "was made without benefit of a reference to any portion of a stenographic transcript of the jury trial." 372 U. S. at

493. We now submit that the most elemental notions of due process require that a transcript of the juvenile court proceedings be made, in order to provide an adequate basis for whatever mode of review is deemed appropriate.

CONCLUSION

The judgment of the Supreme Court of Arizona should be reversed with instructions to grant a writ of habeas corpus ordering the release from custody of Gerald Francis Gault.

Respectfully submitted,

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APPENDIX

Arizona Constitution, Article 6, Section 15

The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent, neglected, incorrigible or delinquent children, or children accused of crime, under the age of eighteen years. The judges shall hold examinations in chambers for all such children concerning whom proceedings are brought, in advance of any criminal prosecution of such children, and may, in their discretion, suspend criminal prosecution of such children. The powers of the judges to control such children shall be as provided by law.

Arizona Criminal Code § 13-377

A person who, in the presence of or hearing of any woman or child, or in a public place, uses vulgar, abusive or obscene language, is guilty of a misdemeanor punishable by a fine of not less than five nor more than fifty dollars, or by imprisonment in the county jail for not more than two months.

Juvenile Code of Arizona
§§8-201 to 8-239

Article 1.
GENERAL PROVISIONS

§ 8-201. Definitions

In this chapter, unless the context otherwise requires:

1. "Juvenile court" means the superior court when exercising its jurisdiction over neglected, dependent, incor-

rigible or delinquent children, or children accused of crime under the age of eighteen years.

2. "Judge" means judge of the juvenile court.

3. "Child" means a person under the age of eighteen years.

4. "Neglected child" includes:

(a) A *child abandoned* by its parents, guardian or custodian.

(b) A child who lacks proper parental control by reason of the fault or habits of the parent, guardian or custodian.

(c) A child whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical and surgical care, or other care necessary for its health, morals or well-being.

(d) A child whose parent, guardian or custodian neglects or refuses to provide special care made necessary by its mental condition.

(e) A child who is found in a disreputable place or who associates with vagrant, vicious or immoral persons.

(f) A child who engages in an occupation, occupies a position, or invites conditions dangerous to life or limb or injurious to the health or morals of himself or others.

(g) A child who is subjected to cruel and inhuman treatment and shows the effect of being physically mistreated.

5. "Dependent child" includes a child who is homeless or destitute, or without proper support or care through no fault of his parent or guardian, and a child who lacks proper care by reason of the mental or physical condition of his parent, guardian or custodian.

6. "Delinquent child" includes:

(a) A child who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.

(b) A child who, by reason of being incorrigible, wayward or habitually disobedient, is uncontrolled by his parent, guardian or custodian.

(c) A child who is habitually truant from school or home.

(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others.

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§ 8-202. Jurisdiction of juvenile court

A. The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting neglected, dependent, incorrigible or delinquent children, or children accused of crime under the age of eighteen years, and when exercising that jurisdiction shall be known as the juvenile court.

B. In a county having more than one judge of the superior court, the judges shall designate, for a period of not less than one year, one of their number to serve as judge of the juvenile court.

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§ 8-203. Commissioner; power

In the absence of a judge from his county, the court commissioner shall make necessary orders for the temporary care, custody and control of children.

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§ 8-204. Probation officers

A. The judge presiding in the juvenile court may appoint a chief probation officer, a deputy probation officer and such additional deputy probation officers, not exceeding one for each fifty persons on probation, as he deems necessary. In counties of the first class the judge may appoint necessary office assistants. The probation officers, deputies and assistants shall be discreet persons of good moral character.

B. In a county having a population of fifty thousand or more, a person shall not be appointed chief probation officer until he has passed a competitive examination touching child welfare, juvenile delinquency and dependency and other subjects associated with social science, prescribed and given by a committee of three members to be appointed by the judge of the juvenile court. The members of the committee shall be persons engaged in and acquainted with educational and welfare work and practices.

C. The probation officer shall have the authority of a peace officer. He shall:

1. Look after the interests of neglected, delinquent and dependent children of the county.

2. Make investigations and file petitions.

3. Be present in court when cases are heard concerning children and represent their interests.

4. Furnish the court information and assistance as it may require.

5. Assist in the collection of sums ordered paid for the support of children.

6. Perform other acts ordered by the court.

D. The probation officer shall give bond for the faithful performance of his duties, in such sum as the court may determine, and the cost thereof shall be paid by the county.

• • • • •

§ 8-205. Salaries

The salary of the chief probation officer of the juvenile court in each county, his deputies, assistants and all other employees, shall be fixed by the judge presiding in the juvenile court, with the approval of the board of supervisors, and shall be a county charge.

• • • • •

§ 8-206. Venue

A. The venue of proceedings in the juvenile court shall be determined by the county of the residence of the child, or the county where the neglect, dependency or delinquency obtains or is committed.

B. Where the residence of the child and the situs of the neglect, dependency or delinquency are in different counties, invoking proceedings in one county shall bar proceedings in the others.

• • • • •

ARTICLE 2.

PROCEDURE

§ 8-221. Arrest of child for violation of law

A. A peace officer, other than the probation officer, who arrests a child under the age of eighteen years shall forthwith notify the probation officer, and shall make such disposition of the child as the probation officer directs.

B. This article shall not be construed to prohibit a peace officer from taking into custody a child who is found violating a law or ordinance, who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals or welfare unless immediate action is taken.

* * * * *

§ 8-222. Initiation of proceedings

A. Any person may, and a peace officer or probation officer shall, give to the juvenile court information in his possession that a child is delinquent, neglected or dependent. Thereupon the court shall make preliminary inquiry to determine whether the interest of the public or the child requires further action. When practicable, the inquiry shall include a preliminary investigation of the home and environment of the child, his previous history, his physical, mental and moral well-being, and the circumstances of the offense committed, if any. If the court determines that formal jurisdiction should be acquired, it shall authorize a petition to be filed invoking its jurisdiction in such form as it may prescribe.

B. The powers of the court may be exercised upon the filing of a petition by any resident of the county, or any peace officer or probation officer, alleging that a child is neglected, dependent or delinquent, and needs the care and protection of the court, without alleging the facts.

* * * * *

§ 8-223. Child charged with crime

When a child under the age of eighteen years is charged with the commission of a crime or violation of an ordinance

before a magistrate or justice of the peace, the magistrate or justice of the peace shall certify that the child is so charged, and shall transmit the records of the case to the clerk of the superior court, and thereupon the juvenile court shall exercise jurisdiction.

* * * * *

§ 8-224. Subpoena of parent or guardian; witnesses; contempt; attachment

A. When the jurisdiction of the juvenile court has attached, the court may make orders necessary for compelling the production of the child and the attendance of the parent, guardian and other persons having custody or control of the child. If a person other than the parent or guardian of the child is cited to appear, the parent or guardian, or both, shall be notified of the pendency of the case and of the time and place appointed by personal service, except as otherwise provided in this article.

B. The clerk of the court shall issue subpoenas and process to compel the attendance of necessary witnesses at a hearing involving a child. The process may be served by an officer of the court, probation officer or officer authorized to serve process in a civil action. No attendance or mileage fee shall be paid a witness, unless expressly authorized by the judge, in which event the fees allowed shall be as prescribed in civil actions. If the judge is satisfied that it is impracticable to serve personally a citation or other notice to appear, he may order service by registered mail or by publication, or both, and service in either manner twenty-four hours prior to the time fixed in the citation for the return thereof, if so ordered by the judge, is sufficient.

C. If a person cited or subpoenaed fails to appear, without reasonable cause, he may be proceeded against for contempt of court.

D. If the citation cannot be served, or the parties served fail to obey it, or when it appears to the judge that the service will be ineffectual or the welfare of the child requires that he shall be brought forthwith into the custody of the court, an attachment may be issued against the parent or guardian or against the child.

* * * * *

§ 8-225. Custody of child pending hearing

A. Pending final disposition, the child shall be subject to the order of the court and may be permitted to remain in the control of his parents, guardian or person having his custody, or the probation officer, or he may be detained in a place provided by state or county authorities, or by an association or agency, public or private, for the care of delinquent, neglected or dependent children.

B. A dependent and neglected child shall be placed in the home of a maternal or paternal relative whenever possible, providing the home and the ability of the relative to provide proper care is approved by the court.

* * * * *

§ 8-226. Detention home; separate custody

A. The board of supervisors shall maintain a detention home separate and apart from a jail or lockup in which adults are confined, which shall be under the charge of a person of good moral character, where children within the provisions of this article shall, when necessary before or after trial, be detained.

B. A child, pending a hearing, shall not be placed in an apartment, cell, place of confinement, court room or vehicle or transported in company with adults charged with or convicted of crime.

* * * * *

§ 8-227. Supervision of detention home

The juvenile court shall supervise the detention home, and shall appoint the person to have charge thereof. The court shall appoint a visiting board of three members to serve without pay to inspect the detention home not less than once every ninety days. The visiting board shall make a report to the court of the condition and operation of the detention home, with such recommendations as it deems advisable, which shall be filed with the clerk of the court.

* * * * *

§ 8-228. Effect of adjudication; use as evidence

A. An adjudication by the juvenile court upon the status of a child shall not operate to impose any civil disability, nor shall a child be deemed a criminal by reason thereof. An adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged with or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution.

B. The disposition of a child or of evidence given in the juvenile court shall not be admissible as evidence against the child in any proceeding in another court, nor shall such disposition or evidence disqualify a child in a civil service application, examination or appointment.

* * * * *

§ 8-229. Hearings; record

The hearing of any matter involving a child shall be informal, and the judge shall, in chambers, without the intervention of a jury, inquire into the facts, order a medical or mental examination, if advisable, and make a record of the name, age and place of birth of the child and the names of his parents.

* * * * *

§ 8-230. Hearing by referee

A. When it appears to the court, in a proceeding affecting a neglected, dependent or delinquent child, that the interests of the child will be served by an examination and hearing before a referee, the judge may direct that the proceeding be so heard, and shall appoint a referee to hear the matter and report his conclusions and recommendations to the court, in writing, together with all papers relating to the matter.

B. A hearing before the juvenile court upon the report of a referee shall be allowed to the parent, guardian or custodian of the child concerned, upon the filing of a request therefor within two days after conclusion of the hearing before the referee. If a hearing by the court is not requested, the conclusions and recommendations of the referee, when confirmed by an order of the court, shall become the judgment of the court.

* * * * *

§ 8-231. Disposition and commitment; support; transfer of records; removal from state

A. The judge shall make such order for the commitment, custody and care of the child as the child's welfare

and the interests of the state require. He may commit the child:

1. To the care of his parents, subject to supervision of the probation officer.

2. To a probation officer, subject to such conditions as the judge may impose.

3. To a suitable institution.

4. To an association willing to receive him.

5. To a reputable citizen of good moral character.

6. To an appropriate public or private agency authorized to care for children.

7. To a suitable school.

8. To the state industrial school.

9. To an institution provided for girl juvenile offenders.

10. To maternal or paternal relatives, provided they are physically and financially able to provide proper care.

B. The juvenile court may make an order directing the parent of a child to contribute to his support such sum as the judge may determine, or may allow a reasonable sum for the support of the child at the expense of the county.

C. When the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child.

D. The juvenile court may permit removal from the state of a neglected, dependent or delinquent child, by the person to whom his care may be temporarily awarded, upon such recognizance, with or without sureties, as may

satisfy the court, obligating the person to produce the child when required by the court.

* * * * *

§ 8-232. When child may not be committed; medical examination

A. A delinquent child under the age of twelve years shall not be committed to the state industrial school, or to an institution for girl juvenile offenders, unless, after the care given the child by probation, the court finds that the interests of the child and the welfare of the community demand his commitment, nor shall a neglected or dependent child be committed to any such school.

B. Before commitment, every juvenile offender shall be given a medical examination, which shall include an x-ray of the lungs and a blood test for syphilis. A record thereof shall be made, including medical findings based thereon, and if the juvenile offender is thereafter committed to an institution, the record shall accompany his commitment papers.

* * * * *

§ 8-233. Guardianship

When the juvenile court awards a dependent child to the care of an association, board or institution, public or private, or to an individual, the child shall, unless otherwise ordered, become the ward and be subject to the guardianship of that association, board, institution or individual. The association, board, institution or individual shall have authority to place the child in a family home, with or without indenture, and may be made party to any proceedings for the legal adoption of the child, and may appear in court

where the proceedings are pending and consent to adoption. Consent of the association, board or institution, public or private, or the individual to whom the court has awarded the dependent child, shall be sufficient to authorize the court, in its discretion, to include guardianship of the estate of the child. As amended Laws 1956, Ch. 149, § 1.

• • • • •

§ 8-234. Report of custodian

When a child is committed to the care of any person, the matter shall be assigned by the juvenile court to a probation officer, who shall require a report quarterly, or oftener if the court so orders, from the person to whom the child has been committed, reporting the child's condition and welfare. The report shall be filed with the court.

• • • • •

§ 8-235. Physical and mental care

A. When a child concerning whom a petition has been filed in the juvenile court appears to be in need of medical or surgical care, the court may order the parent, guardian or custodian to provide treatment for the child in a hospital or otherwise. If the parent, guardian or custodian fails to provide the care as ordered, the court may, after notice, enter an order therefor, and the expense, when approved by the court, shall be a county charge. The court may adjudge that the person required by law to support the child pay part or all the expense of treatment.

B. If it appears that a child concerning whom a petition has been filed in the juvenile court is mentally defective or mentally disordered, the court may commit the child to an

institution authorized by law to receive and care for such children.

* * * * *

§ 8-236. Jurisdiction; length of commitment; placement

A. When jurisdiction has been acquired by the juvenile court of a child, the child shall continue under the jurisdiction of the court until he becomes twenty-one years of age, unless sooner discharged, except that from the time of admittance to the state industrial school or to an institution for girl juvenile offenders, a child shall be subject to the exclusive control of the board of directors of state institutions for juveniles until his absolute release.

B. A commitment of a child shall not extend beyond the minority of the child, and commitments to the state industrial school or an institution for girl juvenile offenders shall be for the term of the child's minority, unless sooner discharged by the board of directors of state institutions for juveniles.

C. The court, in making orders for the commitment or adoption of a child, shall place it, as far as possible, in the custody of persons having the same religious belief. When possible the child shall be placed in an appropriate family home and become a member of the family by adoption or otherwise.

* * * * *

§ 8-238. Destruction of record

Upon the expiration of the period of probation or following the expiration of two years after the discharge of a child from the institution to which he may have been committed, the judge of the juvenile court shall order the clerk

to destroy the records of the proceeding, unless it appears that prior to the expiration of the prescribed period the child has been convicted of an offense under the laws of this or another state. The superintendent of the institution shall notify the clerk of the court which committed the child when two years have expired after his discharge.

• • • • •

§ 8-239. Cooperation

County, city and town officials and departments shall render assistance and cooperation within their power which may further the objects of this article. An institution or agency to which the juvenile court commits a child shall give the court or an officer appointed by it such information concerning the child as the court or the officer may require.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

In the Matter of the Application

—of—

PAUL L. GAULT and MARJORIE GAULT, father and mother of GERALD FRANCIS GAULT, a Minor,

Appellants.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR LEGAL AID SOCIETY AND CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, INC., *AMICI CURIAE*

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—of—

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BRIEF FOR LEGAL AID SOCIETY AND CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, INC., *AMICI CURIAE*

Interest of Amici*

Amicus Legal Aid Society has supplied legal representation in all juvenile proceedings in New York City for the past four years to all children whose parents or guardians are financially unable to furnish them with an attorney. In the year ending June 30, 1965, 8,800 of the 11,001 children appearing in New York City in juvenile delinquency and

* The consents of both parties to the submission of this brief, are on file in the office of the Clerk of this Court.

similar proceedings were represented by attorneys on the staff of amicus.[1]

Assignment of attorneys as "law guardians" in juvenile proceedings was mandated by the New York Family Court Act, effective September 1, 1962.[2] The Family Court Act, with the stated purpose of providing "a due process of law" for juvenile cases (section 711), established a code of procedure which also includes provisions respecting detention before and during the proceedings (Art. 7, part 2); notice of the allegations (secs. 736, 737); notification to the child of his privilege to remain silent (sec. 741); exclusion of incompetent evidence in the fact-finding hearing (sec. 744); the judge's statement of grounds for a finding of delinquency (sec. 752); a hearing as to disposition (secs. 743, 745, 746); and the right to appeal (sec. 1012).

While New York has thus provided for protection in a number of the areas in which appellants experienced a deprivation of due process, amici are concerned with the

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[1] Legal Aid attorneys appear for children in all proceedings in the Juvenile Term in New York City of the Family Court of the State of New York. The Juvenile Term has exclusive jurisdiction over cases of neglect, delinquency, and children denominated "persons in need of supervision," who would under the Arizona statute here in issue and the laws of most states be included in the "delinquent" category. The figures in the text above are for delinquency and persons-in-need-of-supervision cases.

[2] Laws of 1962, c. 686 (McKinney's Consolidated Laws of New York, Book 29A), secs. 241-243, 741. The Act was adopted following extensive hearings conducted by a legislative committee throughout the State. See N. Y. Joint Legisl. Comm. on Court Reorganization, Report II (The Family Court Act) 1962. Amicus Citizens' Committee, a voluntary organization established in 1945 for the betterment of services for children, was a vigorous proponent of the Act.

See Isaacs, The Role of the Lawyer in Representing Minors In the New Family Court, 12 Buffalo Law Rev. (1963) 501.

establishment of the requirements of fair procedure as a matter of constitutional right. Avoiding repetition of appellants' arguments, amici will discuss some of the due process questions before this Court on the basis of the experience of the Legal Aid attorneys in juvenile cases.

Points to Be Presented by Amici

I. The constitutional requirements for a juvenile delinquency proceeding must be determined in part on the basis of its similarities to a criminal prosecution.

II. The right to the assignment of counsel and other rights essential for fairness and equal justice must be accorded in delinquency proceedings.

III. A constitutional right to a hearing must be recognized in a juvenile disposition, whether or not it is required in criminal sentencing.

IV. The Arizona provision as to conduct endangering morals or health violates the due process guarantee because of its excessive breadth and vagueness.

Statement of the Case

The facts, detailed in appellants' brief, will only be summarized here.

Appellants' fifteen-year-old son, Gerald, was taken into custody and detained because he was suspected of participating with another boy in a "lewd" telephone call, of which a woman in their neighborhood complained. On a petition by a probation officer, alleging on information and

belief merely the general conclusion that Gerald was a "delinquent minor" (R. 80), a superior court judge, sitting as a juvenile court judge pursuant to the Juvenile Code of Arizona, conducted a hearing. No transcript was kept, but the testimony in the instant habeas corpus proceeding shows that the complainant, the recipient of the telephone call, was not present at the hearing. The testimony as to Gerald's admissions at the hearing was conflicting, the favorable version being that he stated he only dialed the telephone number for the call; under the adverse version—that of the juvenile court judge—Gerald admitted making some of the lewd remarks, but not "the more serious" ones (R. 59).

The juvenile court judge held that Gerald was a "delinquent child" within the meaning of the Juvenile Code of Arizona and committed him to the State Industrial School "for the period of his minority unless sooner discharged by due process of law" (R. 82).

The Supreme Court of Arizona, denying the instant petition for a writ of habeas corpus to secure Gerald's release, assumed throughout most of its opinion that the juvenile court's delinquency determination and its authority to commit him to the State Industrial School was based on Section 8-201-6(a) of the Arizona Juvenile Code (see opinion of Supreme Court at R. 83-85, 93-95). The lower court judge who held a hearing in the habeas corpus proceeding made the same assumption (see rulings of Superior Court judge, R. 63, 73). That section of the Juvenile Code provides that a child who violates a state law is a "delinquent child". The Supreme Court, however, also mentions the testimony of the juvenile court judge that he had held Gerald delinquent under both the violation-of-law provi-

sion and under the provision that a "delinquent" includes "a child who habitually so deports himself as to injure or endanger the morals or health of himself or others" (sec. 8-201-6(d)). (See judge's testimony, R. 62; Supreme Court opinion, R. 95.)

Summary of Argument

I.

A proceeding against a juvenile based on his alleged violation of law or other alleged misconduct is so similar in substance and import to a criminal prosecution that the fundamental safeguards of justice afforded to adults charged with crime must be observed. For, with a juvenile delinquency adjudication the child is subject to restraint and confinement in State institutions, and also to a stigma and handicap similar in its long range effects to those from a criminal conviction.

The rehabilitative purpose of a juvenile confinement is ineffective to distinguish a delinquency proceeding from a criminal prosecution either factually or for constitutional purposes. The vital point in determining the safeguards required for the individual's protection against a misuse of State power, is whether he is subject to a restraint of liberty. And under this Court's decisions the availability of a constitutional protection is not tied to a rigid distinction between criminal and civil forms of action, but depends on the reasonableness of the discrimination as to the particular safeguard.

II.

1. In view of the grave potentials of a delinquency proceeding and the significant role for counsel, the principle of *Gideon* v. *Wainwright,* 372 U. S. 335, applies; the constitutional guarantees of due process and equal protection require an offer to assign counsel in delinquency proceedings whenever the child and his parents are unable to employ counsel.

The right to counsel is the assurance in the daily operation of the juvenile court that all of the other rights the child has, whether constitutional or statutory, will be realized. Even under the skeletal Arizona statute, appellants and their son had rights which they were unqualified to assert without an attorney. Nor did Gerald's admission of some involvement in the charged incident gainsay the need for counsel's basic functions, of promoting an accurate determination of the facts through his examining and cross-examining witnesses; presenting legal issues as to the elements of a violation of law; and aiding the child and his parents when the judge considered the crucial issue of the need to commit him.

2. The privilege against self-incrimination, which should be deemed applicable in delinquency proceedings because of their essentially criminal character, has the same general values and effect in juvenile as in adult proceedings.

3. Due process requires formal notice and precise allegations as to the child's delinquency, primarily to afford the child and his parents adequate opportunity to make a defense, and secondarily to focus and clarify the judge's evaluation of the evidence.

In the instant case the lack of clear and definite allegations, coupled with the judge's failure to state his findings or the grounds for the delinquency adjudication, resulted in uncertainty as to its basis which inflicted a further deprivation of due process of law.

4. Arizona's failure to provide for an appeal in juvenile delinquency cases, and thus for a corrective for mistakes, unfairness and inequality in the administration of the law, is a violation of the due process and equal protection guarantees, particularly since an appeal is available in criminal and civil proceedings of similar or less gravity. Habeas corpus is inadequate to protect even the limited rights accorded the juvenile under the Arizona statute.

Even absent the right to appeal, Arizona must, as a matter of due process, make some provision for recording the evidence at juvenile delinquency hearings. Under the present Arizona record-keeping system, a child and his parents are deprived of the opportunity adequately to present even a due process challenge to a delinquency determination.

III.

Appellants and their son had a constitutional right to a hearing as to the need for his commitment: a right to try to refute or explain whatever adverse facts the judge was considering, and to urge countervailing facts and reasons against his commitment. Due process guarantees a hearing, to avert arbitrariness or false surmises in the crucial determination of whether to remove a child from his parents and confine him in a State institution.

Whether or not a hearing is required in the imposition of a criminal sentence, it is a constitutional requisite in a

juvenile disposition. In delinquency proceedings consideration of the social factors cannot be held a matter of grace, since their primacy furnishes the justification for the denial of the safeguards accorded in criminal prosecutions. Further, only by a hearing requirement as a protection against arbitrariness can the juvenile court judge's relatively unlimited discretion as to commitment be saved from unconstitutionality. Finally, the disposition of a child in a juvenile proceeding affects a greater complex of rights than the criminal sentencing of an adult, for it involves not only the liberty of the child but the interests of the parents in the child and their right to his custody.

IV.

The Arizona provision as to conduct endangering morals or health, violates the due process guarantee because it grants the judge broad and uncontrolled authority to impose his subjective standards and personal values.

ARGUMENT

The determination of delinquency and the commitment to a State institution, as well as the pertinent provisions of the Juvenile Code of Arizona, are invalid under the due process and equal protection guarantees of the Fourteenth Amendment to the United States Constitution.

I. The constitutional requirements for a juvenile delinquency proceeding must be determined in part on the basis of its similarities to a criminal prosecution.

Under the Arizona statute, as in most of the States, *the same procedure is used in all juvenile proceedings*, whether arising from the child's condition of "neglect" or "dependency" because of a failure in parental care, or from the child's acts of "delinquency".[3] The latter proceedings, grounded on the child's alleged misconduct, must, we urge, as a constitutional matter be differentiated from the other actions involving the intervention of State power in the child's life and in the parent-child relationship.

The basic similarity of delinquency proceedings, though in form civil, to a criminal prosecution requires that the State accord the child the fundamental safeguards of justice afforded to adults charged with crime. For, the availability of a constitutional protection does not depend on a rigid distinction between criminal and civil forms of action, but on an appraisal of essentials,[4] and of whether

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[3] In New York and a number of other States, juvenile proceedings no longer cover the "dependent" category.

[4] See *Plymouth Sedan* v. *Pennsylvania*, 380 U. S. 693; *Giaccio* v. *Pennsylvania*, 382 U. S. 399; *Jordan* v. *DeGeorge*, 341 U. S. 223, 231; compare *Kingsley Books Inc.* v. *Brown*, 354 U. S. 436, 441-443; *Village of Laurel Hollow* v. *Laverne Originals*, 17 N. Y. 2d 900 (1966).

there is a reasonable ground for the State's differentiation with respect to the particular safeguard.[5]

To the question stirred in *Kent* v. *United States,* 383 U. S. 541, 551, of whether a juvenile charged with a violation of law must be accorded the same protections "accorded to adults suspected of criminal offenses," the answer in some respects must be affirmative.

Similarities to Criminal Prosecution

The most obvious similarity between a juvenile delinquency proceeding and a criminal prosecution is that the individual, like Gerald Gault in the instant case, is subject to confinement in a State institution on the basis of a determination that he has violated the law. Though the same hearing procedure is used for all juvenile cases, customarily it is only the delinquent child, as differentiated from the neglected or dependent, who are restrained and confined.[6]

The major benefit to the child from consideration of his alleged violation of law in juvenile rather than criminal proceedings, arises, as indicated in *Kent,* from the fact that the judge has a unitary power of disposition in all delinquency cases—to order commitment for an indeter-

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[5] *Rinaldi* v. *Yeager,* 384 U. S. 305; *Baxstrom* v. *Herold,* 383 U. S. 107, 111-112. A differentiation between minors and adults must be reasonable. *People* v. *Munoz,* 9 N. Y. 2d 51, 60-61 (1961); *Bookcase, Inc.* v. *Broderick,* 18 N. Y. 2d 71, 73 (1966); see *Butler* v. *Michigan,* 352 U. S. 380, 383.

[6] While section 8-231 of the Arizona Juvenile Code gives the judge the power to commit any child within juvenile court jurisdiction to the State Industrial School,—whether dependent, neglected, or delinquent—section 8-314 provides that "the industrial school shall be maintained for the detention, education, employment and reformation of male juvenile offenders. . . ."

minate term until the child's majority.[7] Thus under Arizona law and the law of most states, the juvenile is free from the penalty provisions of the State's criminal law: in particular, from mandatory minimum periods of incarceration, fines, hard labor, or capital punishment. Since, however, the judge's commitment authority is the same no matter how trivial the child's violation of law, the other side of this coin is that he may be confined for a much longer period than an adult committing the same acts. An adult could have been jailed for the violation here in issue for only two months, rather than for six years, which was the remainder of Gerald's minority.[8]

To say that the law violation in a juvenile case merely establishes the court's authority over the child; that a juvenile commitment is based on the child's needs rather than the violation; and that its purpose is to rehabilitate him,—these analyses are ineffective to distinguish a juvenile from a criminal case. Certainly rehabilitation may figure in a criminal court judge's choice of sentence; and conversely the other purposes of incarceration of a criminal—protection of the community through his isolation, and deterrence of law violation—undoubtedly play a role in juvenile commitments along with rehabilitation (e.g., see opinion of court below, R. 96, as to commitment as a

[7] New York is atypical in that the statute prescribes a maximum term of commitment of three years. N. Y. Family Court Act, section 758.

[8] Arizona Revised Statutes (1956) sec. 13-377 provides for a fine of five to fifty dollars and not more than two months in the county jail for certain uses of vulgar and obscene language; section 13-371 (4) provides for a fine not exceeding $200 or imprisonment not exceeding two months for use of obscene epithets.

See *Plymouth Sedan* v. *Pennsylvania*, 380 U. S. at p. 701, comparing the penalties in the civil and criminal proceedings there involved.

means of protecting society, and *In re Lewis*, 11 N. J. 217, 94 Atl. 2d 328, 332, 1953).

In any event, the requirements for fairness in a delinquency proceeding cannot be determined by the motivations for juvenile commitments, or by estimates of whether the institutions for juvenile confinement from time to time and locality to locality keep the promise of individualized rehabilitative treatment. The vital point in determining the safeguards required for the individual's protection against a misuse of State power, is whether he is subject to a restraint of liberty.[9] And a juvenile delinquency proceeding can subject the child to removal from his home and community, restraint within the metes and bounds of an institution, and subjection to its discipline.

Not only in its direct and immediate but in its long-range impact, is a delinquency proceeding similar to a criminal prosecution. For Arizona like other States provides only limited protection against the stigma and handicap implanted by a delinquency proceeding.[10] Throughout the country an especially poignant damage is that young people seeking employment are questioned about years-past juvenile adjudications; there is scant or no assurance

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[9] See *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 402; compare *Gerchman* v. *Maroney*, 355 F. 2d 302, 309-310 (C. A. 3, 1966); *Petersen* v. *Dunbar*, 355 F. 2d 800, 802 (C. A. 9, 1966); *Howard* v. *Smyth*, C. A. 4, Aug. 9, 1966, 35 U. S. Law Week 2095.

[10] See Arizona Juvenile Code, secs. 8-228(A), 228(B), 238.

See *State* v. *Guerrero*, 120 Pac. 2d 798, 801 (Ariz. 1942), as to impeaching use of juvenile commitment in criminal proceeding. Juvenile adjudications are customarily given weight in criminal sentencing. A survey of a number of juvenile courts showed that reports of adjudications for serious violations of law are sent to the Federal Bureau of Investigation. See Note, Juvenile Delinquents, 79 Harv. L. Rev. (1966) 775, 784.

against such investigations in connection with both public and private employment. Indeed, a delinquency adjudication—or even an appearance on a delinquency charge—may dog an individual for the rest of his life in his attempts to secure employment and other opportunities.[11]

Finally, the State has in both delinquency and criminal proceedings a similar interest in fair and accurate determinations. For on this determination depends the selection of the children requiring removal from the community and an allocation of space and care from the State's limited rehabilitative resources, and also, when a serious violation of law is involved, a cessation of the State's effort to apprehend the violator.

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In sum, the instant juvenile delinquency proceeding is so similar to a criminal prosecution in substance and impact, that the essential safeguards for fairness and accuracy there constitutionally required should be held applicable here.[12]

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[11] See *Strong* v. *Kennedy*, 29 Misc. 2d 54 (N. Y. Sup. Ct., N. Y. City, 1961), where an applicant for the job of patrolman in the New York City Police Department had been automatically rejected because of a delinquency adjudication at the age of 13, fifteen years prior to his application. The Armed Services generally require as a condition of enlistment that the applicant consent to inquiry of the court as to his juvenile record. See, generally, Lauer, New Directions for Court Treatment for Youth, 12 Buffalo Law Rev. (1963) 452, 462-466; cf. Adolescents and the Courts (publ. by Citizens' Committee for Children of N. Y., Inc., prepared by Leah Marks, 1963), p. 25.

[12] As to the effects of a delinquency proceeding over and beyond those of a criminal prosecution, in that parental rights are involved, see *infra* Point IV.

II. The right to the assignment of counsel and other rights essential for fairness and equal justice must be accorded in delinquency proceedings.

1. *The Right to Counsel*

Under the decision of the court below, the child and his parents—if unable to afford counsel—have no right to assignment of counsel in a delinquency proceeding; it is even questionable whether they have a right to appear by retained counsel or to receive notification of this right (R. 92-93).

As much or more than in the criminal courts, effectuation of the right to counsel in juvenile proceedings means the right to have counsel assigned.[13] In view of the grave potentials of a delinquency proceeding (*supra*, pp. 10-13) and the significant role for counsel (described below), we believe that the *Gideon* principle applies and that due process and equal protection require an offer to assign counsel in delinquency proceedings whenever the child and his parents are unable to employ an attorney.[14]

Appellants' need for counsel is illustrative of the disadvantages suffered by unrepresented children and par-

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[13] See *supra*, p. 1, as to the percentage of juveniles represented by amicus' attorneys because of lack of means. Prior to assignment of counsel, 92% of the children appearing in juvenile cases were unrepresented in New York City. Schinitsky, The Role of the Lawyer in the Children's Court, 17 Record of Bar Ass'n of City of New York (1962) 10, 15.

[14] See *Gideon* v. *Wainwright*, 372 U. S. 335; compare *People ex rel. Rogers* v. *Stanley*, 17 N. Y. 2d 256 (1966) as to the right of a mental patient to assigned counsel on a habeas corpus petition for his release from commitment for mental illness; for assignment in proceedings that are civil merely in form, see *People* v. *Monahan*, 17 N. Y. 2d 310 (1966); *People* v. *LaVallee*, 20 A. D. 2d 8, 9 (App. Div. 3rd Dept., N. Y. Sup. Ct. 1966).

ents in delinquency proceedings. Even under the skeletal Arizona statute, they have rights which go for naught unless they are represented by counsel. Clearly, appellants were striving to establish Gerald's total or partial innocence and to avoid his commitment. But they were either unaware of, or if aware, felt themselves unable to assert, the procedural rights which might have aided their effort and which, according to the court below, they could have exercised at the juvenile court hearing (see R. 92, 95).[15]

Further, under the Arizona act—and all juvenile court legislation—the judge has authority to adjudicate the child a delinquent and to commit him only if he appears to be within one of the statutory categories of delinquency. Without counsel, Gerald and his parents were ignorant even of this requirement and unable to question whether it was satisfied.[16] The juvenile court judge himself suggested, at the habeas corpus hearing, that the alleged lewd phone call may not have constituted an illegality (R. 61).[17]

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[15] For example, though the court below asserts that appellants had the right to call witnesses and while Mrs. Gault wanted to confront the complainant, she did not press for the latter's appearance (R. 65-66, 8). As to Mr. Gault's frustration at the hearing, see R. 25.

Compare, as to the role of counsel, *Douglas* v. *California*, 372 U. S. 353, 358; *Shioutakon* v. *District of Columbia*, 236 F. 2d 666, 669 (C. A. D. C. 1956); *In re Barkus*, 168 Neb. 257, 95 N. W. 2d 674, 677 (1959); *In re Contreras*, 109 Cal. App. 2d 787, 241 P. 2d 631, 633 (1952).

[16] Due process requires that the determination be supported by at least some evidence. See *Shuttlesworth* v. *Birmingham*, 382 U. S. 87, 94-95, and cases there cited. See *Caruso* v. *Superior Court*, 100 Ariz. 167, 412 P. 2d 463, 466-467 (1966), granting a writ of prohibition because there was "no evidence" to support a determination that a child was "dependent" and the juvenile court therefore had no jurisdiction to "alter the custody or care" of the child.

[17] The judge expressed doubt as to the applicability of section 13-377 of the Arizona Revised Statutes (1956), which punishes certain uses of "vulgar, abusive or obscene language". The only

In addition, a crucial issue of mixed law and fact was presented as to whether Gerald's individual participation in the incident was sufficient to establish a violation of law. The instant delinquency case is typical of many in that it was based on a petty alleged violation of law by several children and in that the child at bar admitted only a minor degree of involvement.[18]

Even when it is clear that some violation of law has been committed by the subject child and that the juvenile court therefore has authority over him, an accurate determination of the facts continues to be significant. While the judges have unitary authority as to disposition in all delinquency cases, they undoubtedly take into account the gravity of the violation, and of any past violations, in determining the need to commit the child.[19] Then too, whether the child's acts amount, let us say, to "grand theft" (see R. 4), or on the other hand assault, or merely disorderly conduct, colors the stigma he suffers.

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other provision mentioned as possibly relevant, A. R. S. sec. 13-371(4), seems clearly inapplicable.

Even from a social welfare standpoint it seems illogical and unsound to base delinquency jurisdiction on the criminal law unless all elements of a violation of law are established. The criterion of anti-sociality for a child, acting with the spontaneity of youth, certainly should be no more severe than for an adult.

[18] See R. 4-5 for another illustration of alleged joint juvenile involvement, though on a graver charge, in the report that Gerald had been "in the company of" a boy charged with theft.

[19] See Allen, *The Borderland of the Criminal Law: Problems of "Socializing" Criminal Justice*, 32 Social Service Review (1958) 107, 117: "However advanced our techniques for determining what an individual is, we have not yet approached the point at which we may safely ignore what he has done. What he has done may often be the most revealing evidence of what he is."

Thus, counsel is needed in a delinquency proceeding like the instant one to perform his basic traditional functions, to promote accurate fact-finding by examining and cross-examining witnesses and to present issues of law. Further, in amicus Legal Aid's experience, the child's attorney participates in the disposition phase—often considerably more than an attorney at a criminal sentencing—questioning statements in probation or psychiatric reports, adducing additional background facts, or suggesting treatment possibilities.

The right to counsel is the only assurance that all of the other rights the child has, whether constitutional or statutory, will be realized in the daily operation of the juvenile court, that the intended limits on the judge's authority and discretion will function.[20] The probation officer, who according to the court below "may be relied upon to protect the infant's interests" (R. 93), here had a particular disqualification as a spokesman for the child in his effort to defend himself. Not only did the probation officer perform his customary role of adviser to the judge (R. 70), but under Arizona procedure he was also the investigator of the alleged violation (R. 48-52) as well as the petitioner calling upon the court to find the child delinquent (R. 50, 80).[21]

The illusion respecting judges and court officials whose perception and wisdom defy the need for procedural limits and protections, must give way to acceptance of the adversary method when the State imposes a grave depriva-

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[20] See *Carnley* v. *Cochran*, 369 U. S. 506, 510.

[21] Compare *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 43-44, 50-51; *Ruiz* v. *Delgado*, 359 F. 2d 718 (C. A. 1, 1966).

tion and restraint. And from the social welfare standpoint, the hope that a non-adversary approach to fact-finding will promote rapport, trust and confidence is, we suggest, unrealistic. Thus, the instant proceeding seemed to result in a sense of confusion, unfairness and victimization. Counsel can rectify to some degree the immense inequality of the child and his parents in their confrontation with State authority in a delinquency case. For, regardless of the judge's admirable purposes, the child in fact is confronting the dominating power of the State; indeed, an incomplete awareness of this reality may, as it apparently did in the instant case, heighten its oppressiveness.[22]

2. *The Privilege Against Self-Incrimination*

The privilege against self-incrimination apparently was not mentioned to Gerald prior to his interrogation or his alleged admissions; the court below, without squarely deciding whether the privilege has any application in juvenile proceedings, held that the juvenile court judge was not required "to advise the infant" of the privilege (R. 93).

Since the substance and effect of a juvenile proceeding on a charge of law violation is essentially criminal (*supra*

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[22] Appellants apparently were especially shocked by Gerald's commitment (R. 2, 7), in the context of the judge's apparent benevolence (R. 66).

A policy argument sometimes urged against the child's representation is that his attorney may be in a conflicted and confusing position because the child's ultimate welfare may be served by the disclosure of adverse information. But disclosure of information which the judge could know only if revealed by parents or child may well be deemed consistent with the attorney's duty as an officer of the court. Compare *Brady* v. *Maryland*, 373 U. S. 83, 87; see Dembitz, Ferment and Experiment in New York: Juvenile Cases in the New Family Court, 48 Cornell Law Quart. (1963) 499, 511.

pp. 10-13), we believe, as appellants urge, that its civil form should not work a deprivation of the privilege, and that notice of its availability must be treated as one of its elements in juvenile as in other courts. If a child is subjected to questions which, in his ignorance of the privilege, he apparently must answer, in effect it is denied him and granted discriminately only to the knowledgeable.

Amicus Legal Aid's experience with the privilege, accorded by some judges in juvenile cases in New York even before enactment of the New York Family Court Act four years ago and routinely since then, indicates that it has substantially the same impact and values as in adult cases. Despite the statutory privilege, at least half of the children represented by amicus in delinquency cases admit the charged misconduct. When it is invoked, the effect is to activate the presumption of innocence absent proof of guilt, and to cause introduction of evidence of the alleged delinquent act. The privilege tends to spare a culpable child from the temptation of falsifying testimony in his defense or falsely casting the blame on another child;[23] or from unwillingly disclosing his culpability only to find his truthfulness negatively rewarded, possibly by a commitment. And the child who is innocent but would be an inept witness can be spared from the experience of testifying and possibly contributing to a misjudgment.

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[23] Compare *Ex parte Cummings*, 71 U. S. (4 Wall.) 277, 331; *Ullman* v. *United States*, 350 U. S. 422, 430-431, 438-439.
Respecting the argument that the privilege interferes with the establishment of rapport between the judge and the child, we suggest that compelled testimony does not tend to promote it, and that rapport probably is not a feasible primary goal in the fact-finding phase of a delinquency proceeding.

Recognition of the privilege for juveniles in delinquency proceedings is also significant to insure them against coercive out-of-court interrogation (see *Miranda* v. *Arizona*, 384 U. S. 436). Physical as well as psychological coercion is not foreign to juvenile cases.[24] And from some standpoints the pretrial interrogation of children has particularly grave implications. Because of the helplessness and subordinate status of minors, police and other officials apprehend and question them with relative casualness;[25] and by the same token they are especially vulnerable to authoritative pressure.

3. *The Right to Notice of the Allegations and of the Grounds of the Delinquency Determination*

The court below approved the procedure of at first notifying the child and his parents of only a general charge of "a delinquency," and advising them of the alleged supporting facts "no later than the initial hearing" (R. 92). Even if the information given appellants at the hearing had been sufficiently specific—and we submit it was not—such informal oral advice deprived them of an adequate opportunity to make a defense, because of the grave possibility of misinterpretation and confusion.[26] This method

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[24] See *Matters of Gregory W. and Gerald S.*, dec. July 14, 1966, App. Div. (N. Y. Sup. Ct.) 2d Dept., N. Y. L. J. for July 15, 1966, p. 8, col. 8.

[25] Thus, Gerald was in custody for five days and subjected to interrogation (R. 48-49) while his case was being determined (R. 7), though there seems to have been no justification for this detention by either a legal or social welfare standard.

And see *Harling* v. *United States*, 295 F. 2d 161, 163 (C. A. D. C. 1961); *Edwards* v. *United States*, 330 F. 2d 849, 850 (C. A. D. C. 1961).

[26] See appellants' statements that they were unsure of whether Gerald was held under a delinquency charge or as a witness against

of notification violated due process in another respect as well, for appellants were also deprived of the clarity in the judge's evaluation of the evidence that derives from his focus on definite written charges.

Coupled with the lack of clear charges was the failure of the juvenile court judge to make findings or state the grounds for the delinquency adjudication—a procedure which again would have promoted careful and canalized deliberation.[27] In the case at bar, the judge was himself unsure of the basis of his order (R. 61-63, 73). Further, when the grounds are elusive, the child and his parents cannot ascertain whether there is an invalid or arbitrary determination to be redressed, nor can a reviewing court properly consider this issue.[28]

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another child (R. 2, 7). See *In re Post*, 280 App. Div. 268 (N. Y. Sup. Ct. App. Div., 3rd Dept., 1952) and *In re Polak*, 7 A. D. 2d 214 (1st Dept., 1959) for similar reactions to oral notification.

[27] Compare *Kent*, 383 U. S. at p. 561; *Hirabayashi* v. *United States*, 320 U. S. 81, 101-102; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 432; *United States* v. *Jones*, 360 F. 2d 92, 96 (C. A. 2, 1966).

[28] The reviewing court must consider the basis of a determination to decide its validity. See *Ashton* v. *Kentucky*, 384 U. S. 195, 198; *Cole* v. *Arkansas*, 333 U. S. 196, 202.

The subjective distress to parents and child from their uncertainty should also be considered, as well as the disadvantage in treating the child of ignorance as to the cause for the delinquency adjudication.

It is irrelevant that, as the court below suggested (R. 95), the juvenile court judge might have had the power to commit Gerald on the basis of a revocation of the probation imposed on him in a previous proceeding, due process requiring consideration of what were, rather than might have been, his grounds. (As to the procedural requirements for a revocation of probation, see cases cited *infra*, n. 36).

The court below erred in its opinion that the policy of hiding "youthful errors" (R. 91) could justify the uncertainty and confusion in this proceeding. Moreover, some record of the basis for a court proceeding is inevitable and indispensable; and the imprecision in Arizona practice may well lead to an implication of greater culpability than the child in fact should bear. (See "Juvenile Referral Reports," which in Arizona apparently are a permanent and basic document, R. 4-5, 79).[29]

4. *Right to Appeal*

Arizona's failure to provide for an appeal in juvenile delinquency cases, and thus for a corrective for mistakes and inequalities in the administration of the law, is a violation of the due process and equal protection guarantees, particularly since an appeal is available both in civil and criminal proceedings of similar or less gravity.[30]

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[29] The court below also approved the failure to call the complaining witness, stating that confrontation is not required where there is an admission by the child (R. 93). Confrontation was nevertheless essential to secure an accurate and reliable determination of the extent of Gerald's involvement, and to preclude influence on the judge of the probation officer's hearsay report. (A felt need for confrontation was expressed by Gerald's mother, R. 65-66, 8.)

The lower court further held that "clear and convincing evidence . . . of the alleged delinquent act" is sufficient (R. 94). This standard as to quantum of evidence works, we suggest, a denial of equal protection of the laws, in that the child is entitled to the protection of the requirement in criminal proceedings of proof beyond a reasonable doubt.

[30] Arizona's broad provisions for appeals in civil cases permit, among others, an appeal from an adjudication of or commitment for insanity or incompetence. Arizona Revised Statutes, sec. 12-2101-k-2. As to criminal appeals, see Ariz. Rev. Stats., sec. 13-1711 to 1713.

Habeas corpus is inadequate to protect even the limited rights accorded the juvenile under the Arizona statute and the decision of the court below. In the first place, habeas leaves without any remedy the child who is subjected to the stigma of a delinquency adjudication and to State control short of commitment or change of custody. Further, neither State nor Federal habeas affords a corrective for deprivations that do not rise to the jurisdictional or constitutional level (see R. 15, 53); thus, for example, while the only evidence question that could be raised on habeas might well be a total failure of proof (see note 16, *supra*), an appellant would not be so limited.

As the court below indicated (R. 94), provision for recording the evidence at juvenile delinquency hearings seems a necessary corollary of the right to appeal. But in any event we suggest that Arizona must, as a matter of due process, make some such provision. For at present in Arizona a child and his parents are deprived of the right adequately to present even the due process claim of a total failure of evidence to support the delinquency adjudication and to establish authority for a commitment.[21]

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[21] The State procedures must be adequate to protect rights guaranteed by due process. See *Pate* v. *Robinson*, 383 U. S. 375, 378; *Case* v. *Nebraska*, 381 U. S. 336.

The State would not necessarily be burdened, however, with the obligation of recording every juvenile delinquency hearing in its entirety. See Handler, The Juvenile Court and the Adversary System, 1965 Wisconsin Law Rev. 7, 44; compare Annotated Missouri Statutes (Vernon's 1962), sec. 211.211, providing an opportunity for hearing and representation by counsel before a commitment to training school; *Ruiz* v. *Delgado*, 359 F. 2d 718, 721, n. 7 (C. A. 1, 1966) as to the practice of granting a trial *de novo* on appeal from the decision in a summary proceeding.

III. The constitutional right to a hearing must be recognized in a juvenile disposition, whether or not it is required in criminal sentencing.

Appellants and Gerald were deprived of due process in that they were not given a hearing on their objections to his commitment—on the need to remove him from his parents and to confine him in a State institution.

The adverse views about appellants and Gerald that were impelling the judge towards his commitment, were not revealed to them; they were uninformed as to what surmises, if any, were taken into reckoning respecting Gerald's school adjustment, family relationships, or other psychological or environmental factors. A very limited social investigation had been conducted by a probation officer some months before (R. 53);[33] if the judge received any report on it, appellants were at no time apprised of its contents.

Appellants had a right to information[34] as to the adverse facts the judge was considering in deciding whether to commit Gerald, a right to try to refute or explain them, and a right to show countervailing facts and reasons

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[33] The probation officer had never even spoken to Gerald's father, nor had he discussed Gerald's behavior and habits with his mother (R. 20, 22, 32-33, 34).

Despite the failure to accord appellants a hearing, the record incidentally furnishes indications of close family ties between Gerald, his brother and his parents, and their care and solicitude for him. See R. 6, 8, 9, 13-14, 22, 28-29, 31, 38, 58.

[34] See *Kent*, 383 U. S. at p. 563. The information must at least be sufficient to permit an attempt to refute or explain adverse facts. Cf. *Willner* v. *Committee on Character*, 373 U. S. 96, 107-108 (concurrence); *United States* v. *Nugent*, 346 U. S. 1, 6.

While the New York act gives the Juvenile Term judge discretion as to the disclosure of probation or psychiatric reports, he almost invariably permits the child's attorney to read them.

against his commitment. Nothing less can stand as a safeguard against misinformation, misinterpretation and arbitrariness. A hearing, for the sake of sound judgment and a reasonable basis for the child's disposition—and thus serving the interests of the child, his parents, and the State as well—is, we urge, mandated by due process. Discretion must not be exercised arbitrarily or on an invalid ground.[35] And the determination of whether to commit is a critical, in fact a crucial stage in a delinquency proceeding, in which arbitrariness or false assumptions cannot be risked. In Gerald's case, for example, the judge had been wavering as to the need for commitment (R. 70), and the showing the appellants might have made at a hearing might well have been decisive against it.

Even if a hearing is not constitutionally required in the imposition of a criminal sentence,[36] it should be deemed requisite in a juvenile disposition. For, the reliable determination of the social background facts has greater primacy in juvenile proceedings than in criminal. While these factors are subject to consideration in criminal sentencing as well as the crime, the evaluation of the child, his relation-

[35] See *Yellin* v. *United States*, 374 U. S. 109, 120-121; *Vitarelli* v. *Seaton*, 359 U. S. 535.

[36] See *Williams* v. *New York*, 337 U. S. 241. Compare, as to the right to a hearing on sentencing, *Commonwealth* v. *Myers*, 397 Pa. 596, 156 Atl. 2d 804, 807 (1959); on revocation of probation, *United States* v. *Register*, 360 F. 2d 689 (C. A. 4, 1966) and *Ex parte Rixen*, 19 N. W. 2d 863 (N. Dak. 1945); in the issuance of other orders for confinement, *Miller* v. *Blalock*, 356 F. 2d 273 (C. A. 4, 1966) and *Gerchman* v. *Maroney*, 355 F. 2d 302 (C. A. 3, 1966).
See Wyzanski, A Trial Judge's Freedom and Responsibility, 65 Harv. Law Rev. (1952) 1281, 1291, suggesting that in spite of *Williams*, a sentencing judge "should never take into account any evidence, report or other fact which is not brought to the attention of defendant's counsel with opportunity to rebut it".

ships, and his environment goes to the very heart of a juvenile proceeding. The basic justification for modifying criminal procedure in juvenile cases is to permit emphasis on individualized treatment, on the child's needs *rather* than his illegal acts.

Thus in juvenile proceedings consideration of the social factors cannot be held a matter of grace, as it is sometimes said to be in criminal sentencing. For, unless a delinquency proceeding is designed to insure a social welfare purpose, the denial of any of the safeguards accorded in criminal prosecutions would violate due process and equal protection.[37] Certainly here there was not the careful consideration of Gerald's individual situation and treatment needs which might justify the failure to accord him such safeguards.

There is a further compelling distinction between a juvenile disposition and criminal sentencing, from the standpoint of a hearing requirement. The juvenile court judge possesses relatively unlimited discretion as to commitment —as illustrated by his commitment of Gerald for, in effect, an indeterminate term of six years following a trivial offense. Only by a hearing requirement, as a protection against arbitrary exercise of this broad power and an assurance of its use for its intended purpose of soundly individualized treatment, can it be saved from unconstitutionality.

Finally, the disposition of a child in a juvenile proceeding involves a greater complex of rights than the criminal

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[37] See *Kent*, 383 U. S. at p. 551. Compare *In re Rich*, 216 Atl. 2d 266, 269 (Vt. 1965) declaring it unconstitutional to commit a child, on the basis of juvenile proceedings, to a penal institution.

sentencing of an adult. Not only the child, but also his parents are directly and gravely affected. We refer not merely to the emotional impact on the parent of his child's adjudication or commitment and to the stigma the parent suffers,[38] but to the effect on the parent's legally cognizable interest in the child's development and in retaining his custody.[39] A hearing as to their child's disposition,—desired by all parents except for those submerged in hopelessness—is therefore their right under the due process guarantee.

IV. The Arizona provision as to conduct endangering morals or health is excessively broad and vague, and the adjudication of delinquency thereunder violated the due process guarantee.

The juvenile court judge testified (R. 61) that his determination of Gerald's delinquency was based in part on the Arizona provision that a "'Delinquent child' includes . . . A child who habitually so deports himself as to injure or endanger the morals or health of himself or others" (sec. 8-201-6(d)).

No argument is needed to show that it was a violation of due process to render an adjudication against Gerald wholly or partly on a ground as to which not even a semblance of notice or hearing was given. Besides the pro-

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[38] The stigma may have practical consequences for the parent, in connection, for example, with the evaluation of the family upon its application for public housing. Cf. *Manigo* v. *N. Y. C. Housing Authority*, dec. August 9, 1966, N. Y. Sup. Ct., N. Y. Cnty., 35 U. S. Law Week 2097.

[39] See *Armstrong* v. *Manzo*, 380 U. S. 545; *Kesseler* v. *Kesseler*, 10 N. Y. 2d 445 (1962); *Arizona State Dept. of Public Welfare* v. *Barlow*, 80 Ariz. 249, 296 Pac. 2d 298, 300 (1956) as to the parents' rights; Dembitz, op. cit. supra n. 22 at pp. 518-519.

cedural deficiency, this statutory basis for delinquency jurisdiction on its face violates due process. For it gives broad and unchanneled power to the judge to impose his subjective standards, and to assert authority to commit a child on the basis of his personal values and individual interpretation of the statute.[46]

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Arizona be reversed, with directions that the appellants' application for a writ of habeas corpus be granted and that the adjudication of delinquency and the order of commitment be invalidated.

Respectfully submitted,

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September, 1966.

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[46] As to the vagueness of the statutory criteria, compare *Burstyn* v. *Wilson*, 343 U. S. 495, 504; *United States* v. *Cardiff*, 344 U. S. 174, 176.

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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 116.

IN THE MATTER OF THE APPLICATION OF
PAUL L. GAULT AND MARJORIA GAULT,
FATHER AND MOTHER OF
GERALD FRANCIS GAULT, A MINOR,
Appellants.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF ARIZONA.

BRIEF OF THE OHIO ASSOCIATION OF JUVENILE COURT JUDGES AS AMICUS CURIAE.

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In the Supreme Court of the United States

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IN THE MATTER OF THE APPLICATION OF
PAUL L. GAULT AND MARJORIA GAULT,
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Appellants.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF ARIZONA.

BRIEF OF THE OHIO ASSOCIATION OF JUVENILE COURT JUDGES AS AMICUS CURIAE.

INTEREST OF AMICUS CURIAE.

The Ohio Association of Juvenile Court Judges, an unincorporated association whose membership includes all but a few of the judges exercising juvenile court jurisdiction in the courts of the State of Ohio, and many former judges of juvenile courts, offers this brief as *amicus curiae*. Written consent to the appearance of the Association as *amicus curiae* has been obtained from the attorneys for both parties and is on file with the Clerk.

STATEMENT OF THE CASE.

Because there was no transcript of either of the two original hearings in the Juvenile Court of Gila County, there appears to be some dispute about the actual facts of the case.

Probably the facts as stated at the outset of the opinion of the Supreme Court of Arizona represent a

fair compromise between the different versions of the parties hereto. *Application of Gault*, 99 Ariz. 181, 407 P. 2d 760 (1965). It would seem a work of supererogation to repeat them, or try to frame still another version of them, as a basis for argument of this case.

Two things do stand out, however, whatever version of the facts is accepted.

The first is that the appellants were not strangers to the juvenile court, who came into it innocent, naive, and inexperienced, with no premonitions of what might be ahead. They had been there before, and had reason to believe that there might be serious consequences if they were brought in again. Mrs. Gault's original affidavit states that she thought she needed an attorney, but rather than consulting one, she discussed the matter with the Chief of Police. This is an example of one of the professional advantages the physicians have over the attorneys. If a cancer victim consults the corner druggist instead of a doctor for advice, they just bury him.

The second is that the child, Gerald, was a full and willing participant in a peculiarly unpleasant type of misconduct, and admittedly had indulged in similar activities before. (R. 57, 58.) This activity was and is the objective of a national advertising campaign directed toward limiting its occurrence.[1] A recent article appearing in a national magazine and entitled "Terror by Telephone" begins with the statement "46,000 complaints in one month—and hundreds of thousands more calls go unreported."[2] The only factual dispute in the record is the utterly inconsequential one as to whether or not Gerald uttered some of the

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[1] See, *e.g.*, AT&T advertisement, 52 A.B.A.J. 790 (1966).

[2] Fleming, *Terror by Telephone*, This Week Magazine, August 28, 1966, p. 4.

obscenities used. This factual dispute is the basis of the legal dispute over the failure to call as a witness the unhappy victim of the obscene telephone calls. Admittedly, Gerald placed the call, and thus, both practically and under the most rigid requirements of the criminal law, was *particeps criminis*, and fully chargeable with all that was said, regardless of who said it. Gerald's admissions were tantamount to a guilty plea in the criminal court and hence there was no need for witnesses or sworn testimony.

From the standpoint of the juvenile court law and philosophy, this second matter is relatively unimportant. The concern of the juvenile court is not so much with what a child did as with why he did it, and how he can be helped to avoid getting into further or more serious difficulties. This does not mean that there need be no showing of the jurisdictional facts, either of violation of law, or other misconduct. If a child has done nothing wrong, or is not shown to be in a condition of neglect or dependency, no proper juvenile court would think of taking jurisdiction. Quite apart from the necessity of protecting the public from activities that are the subject of so much concern, Gerald's actions here might well be taken as presaging much worse trouble to follow, if the reasons for them could not be detected and corrected.

SUMMARY OF ARGUMENT.

1. The basic right of a juvenile is not to liberty but to custody. This fact has been recognized in our law for over a century, and the arguments of appellants here only raise again issues long decided. The fundamental difficulty with these arguments is their failure to recognize that children are not adults. Their problems, either at home or in the courts, must be met with flexibility and freedom

to act in the child's best interests. Confining the juvenile court within the rigid limits of the criminal law, and criminal punishments, would be a backward step, supported neither by precedent nor common sense, and would create more difficulties than it would solve.

2. The broad discretion of the juvenile court, which does not require a relationship between the specific act of delinquency and the disposition of the delinquent child, is not an unconstitutional deprivation of due process. Although broad, the discretion of the court is not unlimited, nor may it be exercised arbitrarily. Both statutes and innumerable cases delineate its limits with legal precision. The doctrine of separation of powers places in the legislature, not the courts, the determination of whether and to what extent actions and dispositions should be connected. So long as the trial court acts within the legislative limits, appellate courts may not interfere. Recent case law shows the horrible practical results of legislative action relating disposition in juvenile cases to the specific wrongful action of the child.

3. The most that can be said about this case is that the trial court committed procedural errors in commitment of appellants' son. While it is easy to second-guess the juvenile court, the record reveals considerable reason to find that the child was not responding to probation, and that both his best interests and the protection of the public required some other approach to his problems. Probation is a matter of grace, and there is no constitutional right to notice and hearing before revocation. Thus the appellants' contentions with respect to due process are not really presented by the record in this case. The fact that a trial court is guilty of errors in law or practice is not sufficient to vitiate the law, and the juvenile court laws should not be vitiated in this action.

ARGUMENT.

One can agree with appellants' proposition that the questions are substantial in this case (Juris. Statmt., 10), and can note also their contention that the legal premise of the earlier juvenile court decisions is being criticized, without accepting the assertion that such criticism is increasing, or the implication that such criticism is irrefutable.

Appellants cite a number of articles and one reported decision. These can easily be matched by contrary views, most of them expressed by persons with long practical experience.[3]

The Supreme Court of Arizona, in its opinion rendering the judgment under attack, adequately meets the

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[3] Alexander, *The Fable of the Fantastic Delinquents*, Federal Probation, March, 1960, p. 13;

Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206 (1960);

Eastman, *The Juvenile Court Judge's Job*, 5 National Probation & Parole Ass'n J. 414 (1959);

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Satterfield, *Justice for Youth Through Law—Some Observations on the Juvenile Court*, Juvenile Court Judges J., October, 1962, p. 13;

Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719 (1962);

Sheridan & Mancini, *On Becoming a Juvenile Court Judge*, U. S. Govt. Printing Office (1961);

Young, *The Constitution and the Juvenile Court—Letter or Spirit?* J. Am. Jud. Soc'y, October, 1960, p. 93;

Young, *The How and Why of the Juvenile Court*, P. T. A. Magazine, December, 1962, p. 7.

A substantially complete list of the cases upholding the constitutionality of the juvenile court laws of the various states appears in *Pee v. United States*, 274 F. 2d 556 (D. C. Cir. 1959).

questions presented for review by appellants. There is little reason for one appearing as *amicus curiae* merely to repeat arguments or multiply authorities. We would prefer, therefore, to address our arguments to more fundamental considerations.

I. The Juvenile Court Must Recognize the Differences Between Children and Adults.

> "Juveniles have particular and peculiar rights and they require particular and peculiar treatment. *The basic right of a juvenile is not to liberty but to custody.* He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so." (Emphasis added.)[4]

The controversies that arise in this case, and the questions presented, are not new, although appellants seem to think they are. Long before the first juvenile court laws were enacted, these same issues were raised, argued, and disposed of. The earliest case specifically dealing with the constitutional rights of what we now call a juvenile delinquent is *Ex Parte Crouse*, 4 Whart. 9, 11, decided by the Supreme Court of Pennsylvania in 1839. The Court there says:

> "As to the abridgment of indefeasible rights by confinement of the person, it is no more than what is borne, to a greater or less extent, in every school; and we know of no natural right to exemption from restraints which conduce to an infant's welfare."

There were many similar decisions before ever the juvenile courts as such came into existence.

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[4] Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719, 720 (1962).

> "We perceive hardly any more restraint of liberty than is found in a well regulated school. Such a degree of restraint is essential in the proper education of a child, and it is in no sense an infringement of the inherent and inalienable right to personal liberty so much dwelt upon in the argument." *In re Ferrier,* 103 Ill. 367, 371, 42 Am. Rep. 10, 12 (1882).[5]

Even though the case law just discussed was and is a sound disposition of the problem, the fact was recognized before the end of the Nineteenth Century that the problem might not remain settled.

> "The question of the extent to which the state may assume the guardianship of children who have committed no offense is one which has never proved a very difficult one practically because of the limited efforts of the Legislature in that direction; but the question goes to the very depths of the subject of civil government, and may grow more difficult as the necessity of saving the young from evil lives becomes more pressing or apparent." [6]

Our Juvenile Court judges recognize, better than anyone else, that the "necessity of saving the young from evil lives" now is both pressing and apparent, as witness the recent plaint of one of them.

> "These children are with us here and now; furthermore, they continue to arrive in ever-increasing numbers. No governor can veto them; no legislature can repeal them; and no court can nullify them.
>
> "And so it seems that we face the rather simple

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[5] See also *Milwaukee Industrial School v. Supervisors of Milwaukee County,* 40 Wis. 328, 22 Am. Rep. 702 (1876).

[6] Rich, *State Guardianship of Children,* 15 L. R. A. 593 (1891).

decision as to whether we mobilize all our brains and resources to save them—or just dump them." [7]

Does the fact that these problems are now more pressing than they have been justify a disregard of precedents going far back in time? Those who are ignorant of legal precedents, or choose to ignore them, usually can find excuse or reason for doing so. The present popularity of resorting to the constitutional safeguards of the liberties of the person presents an easy and plausible reason for ignoring the fact that children could not possibly grow to productive and law-abiding adulthood if they were entitled to those liberties which are the perquisites of physical, mental and emotional maturity.

> "It is the unquestioned right and imperative duty of every enlightened government, in its character of *parens patriae*, to protect and provide for the comfort and well-being of such of its citizens as, by reason of infancy * * * are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of governmental functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise. *County of McLean v. Humphreys*, 104 Ill. 378, 383 (1882).
>
> "It has been for many centuries theoretically true that the State * * * is the guardian of children within its borders. The constitution of a State is always presumed to be framed by organized society governed by settled principles * * *.
>
> "It is, therefore, proper to assume that our constitution, and our laws enacted under it, sanction and confirm the great principle of the sovereign's guardianship of the children within the dominions of [illegible]

[7] Statement of Judge William S. Long, in NCCD News, May-June 1962, p. 2.

sovereign." *Van Walters v. Board of Children's Guardians*, 132 Ind. 567, 569, 32 N. E. 568, 569, 18 L. R. A. 431, 432 (1892).

"Statutes like this have been in existence for the past two hundred years, and it is very late to call their constitutionality into question." *Reynolds v. Howe*, 51 Conn. 472, 478 (1884).

It is no answer to the legal problems which arise from the biological necessity for children to be under restraints which can only be released gradually with increasing maturity to say that under the administration of the juvenile court laws, occasional cases arise wherein children receive the "worst of both worlds." *Kent v. United States*, 383 U. S. 541, 556 (1966).

When we say that children receive the "worst of both worlds" are we saying that since *parens patriae* cannot, because of lack of facilities, give the child the care he requires that he should be tried by criminal procedures and thereby be given the same chance as an adult criminal to escape the consequences of his act by reason of the constitutional protections that may prevent successful prosecution? If we are, then we are *also* saying that the child should be prosecuted to the full extent of the law and receive adult punitive measures if found guilty. Would it not be wiser to require the state to provide proper facilities for care and treatment of the child than to require the state to give the child criminal due process which also must entail criminal punishment of the child? If criminal due process is an advantage to the child, and we contend it isn't, then for him to get this advantage, as above, is but "to burn the barn to roast the pig."

It is possible to find learned justices of Supreme Courts complaining that today children get the best of both worlds.

> "A peaceful citizen has the right to be protected by his government, and to have a spade called a spade, and if young hoodlums are mentally incapable of a criminal intent they should be put to the burden of establishing that proposition in a court of law under established rules and are only entitled as a matter of right to the constitutional guarantees afforded to other citizens." *State v. Monahan,* 15 N. J. 34, 104 A. 2d 21, 40, 48 A. L. R. 2d 641, 662 (Oliphant, J., dissenting) (1954).

The fundamental difficulty with the idea that children brought before the juvenile court, should be accorded the constitutional rights designed to protect adults accused of crime, is that it ignores what every wise parent, and every real professional in the biological and behavioral sciences knows: children are not adults, and do not become adults all at once.

> "Immaturity is the natural condition of childhood. Unfortunately, many modern parents have come to look upon this condition as bad. They cannot bear to see a child as a child. There is a growing social force which dictates that he must be turned into an adult right away * * *."[8]

The typical adolescent in a normal and loving home is a creature of conflicts and contrasts, so grown up and independent one minute, so childish and helpless the next. The understanding person can hear the cry for help in the scream of defiance, can ease the restraints or tighten them to adjust to the fluctuations of the changing pattern of growth. The Juvenile Court, acting under the doctrine of *parens patriae* as the wise parent, must have that which is embodied in the present law, flexibility and freedom to act in the best interests of the child. To undertake to

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[8] Kennick, *Where Have We Gone Wrong?* The Blade (Toledo, Ohio), September 11, 1966, p. 1, at p. 15.

confine this flexibility within the rigid limits of the criminal law and the constitutional provisions applicable to the criminal law, would create far more problems than it would solve.

> "Another aspect of current thinking is a movement toward absolutism the world over * * * the movement * * * may easily be carried so far with mistaken zeal that * * * the juvenile courts in reaction may be pushed back into or may fall back into ordinary criminal courts of the old type * * *."[9]

For these reasons the juvenile court codes of the several states specifically provide that proceedings thereunder are civil, not criminal, in nature. In the case at bar, Gerald Francis Gault was not charged with being a felon or even a misdemeanant, but rather with being a delinquent. Section 8-228, Ariz. Rev. Stat. Ann., provides that:

> "A. An adjudication by the juvenile court upon the status of a child shall not operate to impose any civil disability, nor shall a child be deemed a criminal by reason thereof. Any adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged with or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution.
>
> "B. The disposition of a child or of evidence given in the juvenile court shall not be admissible as evidence against the child in any proceeding in another court, nor shall such disposition or evidence disqualify a child in a civil service application, examination or appointment."

The Arizona Industrial School, to which this lad was committed (not sentenced), is not a "penal" institution, but rather a "school"—a place of learning—which the

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[9] Pound, *The Juvenile Court and the Law*, in 10 Crime & Delinquency 490, 503 (1964).

state, as *parens patriae,* furnishes for youth found to be in need of the specialized care and treatment available there, in the same manner as any wise parent would provide hospitalization for a sick child.

Since we are dealing here with a civil, as distinguished from a criminal situation, constitutional guarantees designed to protect adults accused of crime are not necessarily appropriate.

As we have pointed out, the problem is a recurring one. It is illustrated by the cases of a century ago previously referred to. More recently, it came up fifty or sixty years ago when juvenile court statutes were being adopted and tested. Now we see it again, raised by the pressures of urbanization on the vastly increased numbers of children in our society, and confused and mixed up with the recent upsurge of interest in civil liberty.

Our contention is that these pressures and interests should not be allowed to confuse the issues involved, and that the same legal questions that have been presented in the past should be decided as both precedent and common sense dictate, and in this case, as they were so decided in the court below.

II. The Powers of the Juvenile Court as to Disposition Are Not Restricted Except by the Requirements of the Child's Welfare, and Should Not Be Otherwise Restricted.

At various points, the appellants argue, but rather by innuendo than with honest force, that the juvenile court statutes are an unconstitutional deprivation of due process because of the broad discretion of the court in disposition.[10]

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[10] "* * * it authorizes a juvenile to be taken from the custody of his parents and to be committed to a state institution

(Continued on following page)

Appellants cite *Kent v. United States*, 383 U. S. 541 (1966) in support of their contention that the juvenile courts without procedural safeguards and with excessive broad discretion lodged in the judge "affect thousands of individuals yearly in a way which can adversely determine their future lives." *Kent* did not so hold. On the contrary *Kent* held that waiver of this juvenile court jurisdiction which appellants so roundly condemn is a " 'critically important' action determining vitally important rights of the juvenile" and that "this jurisdiction confers special rights and immunities," *id. at* 556, and that it was a denial of due process to divest him of this right without hearing.

In spite of the reiteration of appellants' contention that there must be standards or limitations upon the juvenile court's discretion, other than those implied from the word "discretion" itself, or the statutory language concerning the child's welfare, and the implication that such standards would be met if there were a relationship between the act of delinquency and the disposition permitted, the appellants cite no authorities whatsoever in support of their position, nor do they offer any argument other than the repetition. Perhaps in this they feel entitled to prevail on the basis of the Bellman's statement, "What I tell you three times is true."

(Continued from preceding page)

by a judicial proceeding which confers unlimited discretion upon the Juvenile Court." (Juris. Statemt., 3.)

"The Arizona Juvenile Code (A. R. S, §§ 8-201-8-239) violates the Due Process Clause of the Fourteenth Amendment because, taken as a whole, it confers unlimited discretion on the juvenile judge without providing standards to prevent its arbitrary abuse." *Id.* at 12.

"It gives the judge authority to make any order for the commitment, custody or care of the child 'as the child's welfare and interest of the state may require.' (§ 8-231) No standards limit this wide discretion of the judge * * *. He is not required to establish a relationship between the specific act of juvenile delinquency and the period of commitment * * *" *Id.* at 13.

It is our contention, however, that this matter is a most serious one, and underlies and supports the specific objections which appellants argue more in detail. By its speciousness, it forms an uncertain foundation for the edifice erected upon it. If it crumbles, the whole structure should fall with it.

Appellants cite no authorities in support of their position because there are none to cite. They make no argument, for there is none in reason which will support their naked assertions.

If the words "the child's welfare" do not provide a standard which controls the discretion of the court, then a large part of our case law is meaningless. In the course of each year, there are somewhere between two hundred and four hundred reported cases in which disposition is governed by reference to the welfare of the child. The usual expression, which is repeated in the case law with monotonous regularity, is that the child's welfare is the pole star which must guide the court's determination of the issues.

To say that a standard so long accepted and so often referred to is not within the measure of "due process" is so patently absurd as to require no further consideration.

By their implication that the standards of "due process" would be met if the juvenile court statutes established some relationship between the acts of the child and the dispositions available to the court, appellants lay themselves open to two arguments, one based on considerations of legal theory, and the other upon practical experience.

The theoretical consideration needs little remark. What actions shall constitute offenses, and what the limits of punishment shall be, have always, under our system

of separation of powers, been matters exclusively within the power of the legislative branch. The court cannot declare that to be an offense which the statutes do not make such. Nor can the court impose penalties other than those ordained by the legislature for the particular offense.

If, therefore, the legislature does not choose to make the dispositions limited in scope or number, it is acting within its constitutional authority, and so long as the court does not transgress the legislative limits, the offender has no complaint, and no appellate court may review the trial court's actions. *In re Lewis*, 11 N. J. 217, 94 Atl. 2d 328, 332 (1953).

In the case at bar the Arizona legislature did impose definite limitations on the trial judge's discretion.[11] These limitations on the trial judge's discretion would apply, regardless of the nature of the delinquency with which the child was charged, whether it was for spitting on the sidewalk, or for having committed a premeditated homicide with malice aforethought. The criterion for determining disposition under such statutes is not what the child did, but rather what his best interests require.

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[11] Section 8-236.B, Ariz. Rev. Stats. Ann., provides that:

"A commitment of a child shall not extend beyond the minority of the child, and commitments to the state industrial school or an institution for girl juvenile offenders shall be for the term of the child's minority, unless sooner discharged by the board of directors of state institutions for juveniles."

Section 8-313 provides in part:

"When it appears to the board of directors of state institutions for juveniles that there is reasonable probability that a child committed to the state industrial school, or to an institution for girl juvenile offenders will, if at liberty, observe the law, and that the child's release will not be incompatible with the welfare of society or detrimental to his own good, the board may issue to the child an absolute release."

That these two criteria are not necessarily closely related is well expressed by the Director of Child Training Schools of the State of Florida.

> "The trouble they cause is not a safe guide to what causes the trouble. To most people the youngster who gets mixed up in a gang fight which ends in someone's getting badly hurt, or culminates in a wanton orgy or destruction is a more serious case than the boy who is found hoarding pencils stolen from his little sister and burying them at regular intervals under his favorite tree. Also it is quite understandable that the profusely repentant sinner or the politely grateful receiver of just punishment would be considered a good outlook as compared with the youngster who hits back when apprehended, clams up even in an interview with a friendly and well-intentioned adult, or bites the very hand extended to him in kindness. Unfortunately, these general assumptions are usually wrong. There are cases in which the 'extremeness' of an offense or its consequences was the result of unfortunate circumstances and the youngster himself was not a serious case. On the other hand our youngster with the pencil-burying ceremony may need expert help to learn how to solve life's problems in a less irrational way."[12]

As the result of recent legislation, these practical considerations are beginning to appear in the case law. The zeal of some of the exponents of appellants' position has led the legislature of at least one state, New York, to amend its juvenile court laws to provide that certain types of disposition may only be used when the acts of the child upon which jurisdiction is based fall into categories corresponding to the types of disposition.

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[12] Dozier, *When You Look at the Delinquent—What Do You See?* Somebody's Boy, August 13, 1966 (Fla. Juv. Ct. Found.), p. 4.

What appellants seek to have this Court force upon the legislature of the State of Arizona has been done voluntarily by the State of New York. So far as the troubled children of that State are concerned, the result has not been happy.

The complications resulting from restricting the Juvenile Court's powers of disposition can be examined in the litigation which begins as *Anonymous v. People*, 247 N. Y. S. 2d 323 (App. Div. 1964) and ends as *Fish v. Horn*, 14 N. Y. 2d 905, 200 N. E. 2d 857, 252 N. Y. S. 2d 313 (Ct. App. 1964). The final holding was that no matter what the welfare of the child or the protection of society might require, the court was limited in disposition by the actions of the child which were the formal basis of the court's jurisdiction.

The ultimate practical result of this statute as construed is shown most poignantly in the case of *In re Anonymous*, 43 Misc. 2d 213, 250 N. Y. S. 2d 395 (Family Court, 1964). There the girl before the court had to be released to go back to living in furnished rooms with two men, from which, perhaps, the probation department would be able to drag her to the clinic for treatment of her syphilis. She could not be committed to the only institution which offered a chance of helping her because her actions did not, under the statute, authorize commitment to that institution.

The inevitable result of accepting appellants' argument that the Juvenile Court statutes deny due process unless the court's discretion in disposition is limited by reference to the actions of the child is a multiplication of cases in which the child must be denied the treatment which offers the greatest prospect of rehabilitation. To condemn even one child to the horrors of tertiary syphilis places a staggering burden upon the conscience. Appel-

lants seem willing to accept this burden. We contend that this Court should not.

III. Mere Procedural Errors in the Trial of a Case Should Not Be the Basis For a Holding That Due Process Was Denied.

Our final contention is that even if the record of the proceedings in the Juvenile Court be examined in the light most favorable to the appellants, instead of following the rule that all presumptions are in favor of the regularity of proceedings in the courts below, the most that can be said is that the trial court committed procedural errors.

From a strict legal standpoint, on the record which is before this Court, it is impossible to see the whole picture of the situation of the appellants and their son as the trial judge must have seen it, although some hints appear in the transcript. (R. 58.)

The appellants in their arguments make it appear as if the child's commitment to the industrial school was shockingly arbitrary. It is always easy to second-guess the hard-pressed juvenile court judge. We do suggest that the type of offense the boy committed; the fact that he had been under probation supervision for several months; and the absence of both his parents from home a substantial portion of the time, all indicate that a period of time in a controlled environment was very probably required, both for the welfare of the child and the protection of the public.

Even if it be granted, arguendo, that the disposition was disproportionate to the seriousness of the acts complained of, the court and probation department were faced with the much more serious problem of determining whether Gerald's actions did not demonstrate rather con-

clusively that probation was ineffectual, as a means of treating his difficulties, requiring that some other approach be adopted. This Court has held that probation comes as an act of grace, and there is no constitutional right to notice and hearing before revocation. *Escoe v. Zerbst*, 295 U. S. 490, 492 (1935).

> "The only evidentiary requisite necessary for the revocation of probation should be an informed recognition that its objectives are not being fulfilled either through manifestations of the individual or as a likely consequence of environmental influences." [13]

Upon this point, the record here is crystal clear, however muddy it may seem to be in other respects. Both Gerald's actions and the environmental influences establish beyond question that the objectives of his probation were not being fulfilled.

If, however, we are wrong about this, then the most that can be said is that the errors complained of here are not the fault of the law, but of the trial court judge. It seems illogical to wipe out or revise the statutes because of an occasional error in a vast volume of litigation.

This problem has been considered by the courts in the past. In *Mill v. Brown*, 31 Utah 473, 486, 88 Pac. 609, 615 (1907), a case relied upon by appellants in the court below,[14] the court says:

> "From an inspection of the record in this case, meagre as it is, we are forced to the conclusion that the difficulties are due far more to the respondent [the Juvenile Judge] than to the law."

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[13] Kean, *Due Process Applied to Hearings for the Revocation of Juvenile Probation*, 16 Juvenile Court Judges J. 178, 182 (1966).

[14] Appellants' Opening Brief, pp. 14, 20.

In the case of *Ex Parte Januszewski*, 196 Fed. 123, 131 (C. C. S. D. Ohio 1911), the court says:

> "That the law, when administered by courts wanting in wisdom and wide judicial discretion, may sometimes be wrongfully applied and thereby work injustice to the accused, is not sufficient to vitiate it."

The most that can be said in this case is that the trial court judge abused his discretion, or wrongfully applied the law of Arizona. However, it would be a grave disservice to law, to justice, and to children if this Court were to vitiate the law because of the trial court's alleged errors.

CONCLUSION.

Because children are not adults, their problems require treatment different from that afforded adults. Informality in procedure and flexibility of disposition are essential to the concept of individualized justice. Departure from the civil and equitable character of juvenile court actions by blanket application of constitutional guarantees designed to protect adult defendants in criminal proceedings would vitiate our juvenile court laws.

For these reasons and those expressed so ably by the Arizona Supreme Court, it is respectfully submitted that appellants were not denied due process of law and therefore the judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

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2. Our constitutional precepts do not allow for the existence of two systems for dispensing justice: one legal and the other extra-legal.

3. The adversary system of justice still remains the best guaranty for maintaining the necessary balance between societal and individual interests, and continues to afford the best protection against inequity and the abuse of discretion.

4. The absence of counsel deprives the child of needed protection while equally removing from society, which pays the bill, an important auditing and scrutiny device to protect against inadequate and socially wasteful dispositions.

5. Depriving children of legal safeguards available to adults is not only objectionable from a constitutional point of view, but tends also to adversely affect their development towards responsible adult citizenship.

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6. Our concept of justice has traditionally emphasized procedural guaranties over human discretion, adversary process over inquisitorial justice. While the institution of additional safeguards in the juvenile court will require more staff and the expenditure of time—these are the expected costs of American justice.

7. The juvenile court, sheltered from both public and professional scrutiny, has become suspect to both those who are concerned with the denial of due process and those suspicious of the coddling assertedly going on in chambers. After half a century as an unproven social experiment, juvenile process needs to go more into the open and is likely to benefit from the opportunity for a public assessment.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

IN THE MATTER OF THE APPLICATION

OF

PAUL L. GAULT and MARJORIE GAULT,

Father and Mother of

GERALD FRANCIS GAULT, a Minor.

On Appeal from the Supreme Court of Arizona

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The American Parents Committee hereby respectfully moves for leave to file a brief amicus curiae in this case, as provided for in Rule 42 of the Rules of this Court. The consent of counsel for the petitioner has been obtained. Counsel for respondent has failed to grant his consent.

THE INTEREST OF THE AMERICAN PARENTS COMMITTEE

The American Parents Committee is a non-profit, non-partisan, public service association working for federal legislation on behalf of the nation's 71 million children. On the Committee's National Council are represented leaders in child and public welfare, research and education, community and professional organizations, business and local government from 39 states. For nearly 20 years the American Parents Committee has taken an active interest in national legislation pertaining to the rights and conditions of children and has worked in cooperation with other organizations and with governmental agencies to improve the understanding of the child's rights and duties in our society. The Committee seeks to file a brief amicus curiae because it believes that the case now before this Court poses questions which are of great importance to all parents and children, as well as to the American community at large.

More than 36 percent of the population of this country is subject not to adult criminal tribunals but to juvenile courts. These courts, although performing a specialized function, nevertheless administer justice. The question of what type of justice is being dispensed in juvenile courts, and through what methods and procedures, is of critical importance to us as an organization dedicated to problems of parents and children. Naturally, these questions also have a direct bearing upon this nation's system of justice and social well-being.

Briefly stated, the compelling question now before the Court is: Can a parent be deprived of the custody of his child and can a child be committed until maturity without knowing specifically beforehand what misconduct is charged to the child, without an opportunity of facing the witnesses to such misconduct, and without the assistance of legal counsel? Beyond this question, the case also presents other important issues: How effective is the specialized system of justice, made applicable to juveniles, in protecting the rights of the alleged delinquent child, the rights of his family and the rights of the community? Does our constitution prohibit the exercise of any social sanctions by government, whether designated criminal or civil, adult or juvenile, unless the accused or the subject of such sanctions is accorded certain standards of due process? Will not the aims of the juvenile courts, in developing responsible citizenship, be furthered by allowing the child more of an experience with the safeguards of constitutional guaranties? Will the system of juvenile courts not benefit from added public confidence by injecting into the system such standards of due process as will free these specialized courts of any imputation of vestiges of judicial incompetence, neglect and ineffectiveness?

The brief amicus curiae tendered herewith discusses both the specific questions and the general issues contained in this case. It is the conviction of this amicus curiae that its brief seeks to produce a balance between societal and individual interests and thus contributes a sense of general perspective not contained in the adversary briefs.

For the above-stated reasons, we respectfully urge this Court to grant this motion for leave to file the accompanying brief amicus curiae in the instant case.

Respectfully submitted,

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IN THE

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IN THE MATTER OF THE APPLICATION
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BRIEF FOR THE AMERICAN PARENTS COMMITTEE AS AMICUS CURIAE

The interest of The American Parents Committee is set out on Pages vii-ix of the foregoing Motion for Leave To File a Brief Amicus Curiae.

The position of The American Parents Committee is symptomatic of an increasing public concern for the treatment of juvenile offenders consistent with funda-

mental fairness. It is further founded on the conviction that the public interest requires a careful review of the legal foundation, as well as the accomplishments and record to date, of the juvenile court institution, upon this sixty-seventh year of its commencement as a new social experiment. Dedicated to the rehabilitative and preventive aims of the juvenile court, the sponsors of this brief believe that such review of standards and proceedings will aid, rather than weaken, the public role of the juvenile court.

I. INTRODUCTION—THE SIGNIFICANCE OF THIS CASE

Children who are within the age group subject to the jurisdiction of the juvenile court numbered 71 million and accounted for 36 percent of our national population in 1965.[1] It is noteworthy that of this large youth population, only some 4 percent ever get involved in delinquency problems. (Excerpts from statement of J. Edgar Hoover, Congressional Record, Sept. 27, 1966, pp. 23073-23074). Still, in terms of the nation's crime and delinquency problems, youthful offenders play an unfortunately important role. It is reported that persons under 18 years of age comprised 21 percent of the police arrests of all criminal acts in 1964, and 48 percent of all arrests for the more serious offenses. Of the more than 1 million youths under 18 arrested, some 697,000 were finally brought to the attention of the juvenile courts. Of these cases, 370,000 were disposed of by the court's staff and 327,000 were disposed of judicially.[2] Finally, a total

[1] Current Population Reports, Population Estimates, Series P-25, No. 321, Nov. 30, 1965, Bureau of Census.

[2] Juvenile Court Statistics—1965. Children's Bureau Statistical Series now in process.

of 88,824 persons were sentenced to federal and state penal institutions in 1963, while 39,511 youths were committed to juvenile institutions in 1964.[3] Likewise, in 1960 a total of 212,953 inmates were held in federal and state prisons, while 56,516 youths were in the custody of training schools and detention homes.[4]

The importance of this case rests, therefore, not only on the fact that it contains significant issues of Federal constitutional law. Its added significance is derived from the fact that this case poses the overall question of whether our constitutional law precepts will permit the operation of a system of social control, parallel but distinct from criminal law, which will be free from the traditional formalities and safeguards made applicable to the latter. Indeed, it is unclear from existing authorities whether juvenile courts are free from standards imposed upon administrative agencies.

At its inception, the establishment of the juvenile court was hailed by Dean Roscoe Pound as "one of the most significant advances in the administration of justice since the Magna Carta." Earlier this year, this Court recognized, however, that "there is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protections afforded to adult nor the solicitous care and regenerative treatment postulated for children." Fortas, J. in *Kent* v. *United States*, 383 U.S. 541, 556 (1966). It is the position of Amicus

[3] Statistical Abstract of the United States, 1965, p. 158; H.E.W., Statistics on Public Institutions for Delinquent Children: 1964, table A, pp. 20-25.

[4] Statistical Abstract of the United States, 1965, pp. 157, 158.

Curiae that children are too important to be thus allowed to receive the worst of both worlds.

It is the purpose of this brief amicus curiae to call to the attention of the Court the multitude of legal as well as social issues involved in the structure and operation of the juvenile court process. The sponsors of this brief do not believe that the issues contained in this case can and should be properly resolved on the basis of a technical construction of legal arguments and stereotyped verbiage alone. The public interest in furthering the social aims postulated for the juvenile court require that any critical assessment of the juvenile court process, and any possible disturbance of the present balance, not be undertaken without attention to the actual day-to-day operations and practices, as well as the total social accomplishments, of the juvenile process. In assessing the constitutional legitimacy of actions taken under the separate juvenile process, this Court need not be limited to traditional criminal standards only, but must, in fact, determine whether the aims and operations of the juvenile system to date indeed have produced such substitute or equivalent guaranties as to satisfy the broader meanings of our constitutional due process requirements.

In this connection, it is truly said, and in respect of juvenile as well as of criminal proceedings, that "due process of law is not for the sole benefit of an accused. It is the best insurance for the government itself against those blunders which leave lasting stains on a system of justice . . . ." Jackson, J., in *Shaughnessy* v. *U. S.*, 345 U.S. 206, 224-25 (1953).

II. THE FACTS OF THE CASE

On June 8, 1964, when he was 15 years old, Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. The arrest was the result of a complaint by one Mrs. Cook, a neighbor of the boys, about lewd telephone calls made to her. Gerald was at that time on six months' probation following an incident in February, 1964, involving a charge of theft. (Transcript of Record 4). No record exists of the earlier incident other than a referral report of the probation department to the court.[5]

The decision to detain the children in this case was made by probation officers Flagg and Henderson. Mr. Flagg interrogated Gerald at length during detention on the evening of June 8 and the morning of June 9. No notice of the detention or the charge was given to Gerald's parents. When Mrs. Gault returned from work on the evening of June 8 and learned from the neighbors about Gerald's detention, she went to the detention home and discovered that a hearing was to be held at 3 p.m. the following day.

On June 9 a petition charging Gerald with juvenile delinquency and alleging the lewd telephone calls was filed with the court by probation officer Flagg. Gerald's parents did not receive any notice of the petition. The same day a hearing was held in the chambers of the juvenile judge. Gerald, his mother and his older brother were present in addition to the probation officers. The father was not present due to his being

[5] Since the proceedings against Gerald Gault in the instant case were commenced with a regular petition and no record exists of the prior charges or disposition, this brief must unavoidably treat the instant case as a new proceeding and not one of a terminated probation.

out of town on work. No one was sworn as a witness at this hearing, no transcript was made, no witnesses were called against Gerald and no report was prepared by either the judge or the probation officers.

Gerald alone testified at the hearing regarding the telephone calls. Absent a transcript, there was later conflict as to what had been said. Mrs. Gault recalled that Gerald had said he merely dialed Mrs. Cook's number while his friend talked to her. The judge and the probation officers, on the other hand, testified that Gerald admitted saying some of the lesser but not the more serious lewd words. At the conclusion of the hearing, the judge indicated that he would "think over" the disposition of the case.

In the afternoon of June 12, Mrs. Gault received a written note from officer Flagg to the effect that a further hearing was to be held on June 15. At the subsequent hearing, Mr. and Mrs. Gault were present. Mrs. Cook, the complaining witness was not present. Probation officer Flagg had talked to her only once, on the telephone, regarding her complaint. The judge had not spoken to her at all. In answer to Mrs. Gault's inquiry, the judge responded that Mrs. Cook was not required to be present at the hearing. A conflict again exists regarding Gerald's testimony at the second hearing. There is a controversy as to whether Gerald admitted only dialing Mrs. Cook's phone or whether he also admitted making the lesser obscene remarks. No other evidence was given.

The parents were never given a copy of the delinquency petition regarding Gerald which was filed on June 9. They were not informed of the right to counsel and the right to confront and cross-examine wit-

nesses. At no time during either hearing were Gerald's home conditions discussed or reviewed. The only investigation was allegedly conducted in February, 1964, when Gerald had originally been put on probation.

Subsequent to the June 15, 1964, hearing, the judge made a finding of juvenile delinquency and committed Gerald to the State Industrial School. No particular grounds were specified by the judge for this decision other than a subsequent explanation that Gerald was "habitually involved in immoral matters". The judge also stated subsequently that he thought the telephone calls amounted "to disturbing the peace." Under § 8-236 B of the Juvenile Code of Arizona, a commitment of a child is to "be for the term of the child's minority" unless he is discharged sooner by the institution's board of directors. Under the Arizona laws, the maximum penalty for an adult convicted of using obscene language over the telephone cannot exceed a two month jail term.[6]

III. THE ISSUES OF THE CASE

We believe that this case urgently presents the following questions:

1. Is the Arizona Juvenile Code (A.R.S. § 8-201-8-239) violative of the due process clause of the Fourteenth Amendment, because it confers unlimited discretion on the juvenile judge, without providing standards to prevent its arbitrary abuses, and further fails to provide the child charged with delinquency and his parents with the following safeguards: a. the right to a timely notice of the hearing and of the charges; b. the right to counsel; c. right to confronta-

[6] Arizona Stats. § 13-377.

tion and cross-examination of witnesses; d. the privilege against self-incrimination; e. the right to a juvenile court transcript and appellate review?

2. Are a delinquency petition and a juvenile court disposition of sufficient adverse effect upon the liberty and future of a child to require that he and his family be afforded all the constitutional safeguards applicable to criminal proceedings?

3. Can a state legislature deprive a person of traditional constitutional safeguards by subjecting him assertedly under the parens patriae doctrine, to a specially designed system of social sanctions which is defined as therapeutic and non-criminal?

IV. SUMMARY OF ARGUMENT

1. No system of social sanctions, however designated, which is authorized to deprive a person of his freedom and to separate him from his family can be exempt from constitutional safeguards.

2. Our constitutional precepts do not allow for the existence of two systems for dispensing justice: one legal and the other extra-legal.

3. The adversary system of justice, however criticized and modified, still remains the best guaranty for maintaining the necessary balance between societal and individual interests, and continues to afford the best protection against inequity and the abuse of discretion.

4. The absence of counsel deprives the child of needed protection while equally removing from society, which pays the bill, an important auditing and scrutiny device to protect against inadequate and socially wasteful dispositions.

5. Depriving children of legal safeguards available to adults is not only objectionable from a constitutional point of view, but tends also to adversely affect their development towards responsible adult citizenship.

6. Our concept of justice has traditionally emphasized procedural guaranties over human discretion, adversary process over inquisitorial justice. While the institution of additional safeguards in the juvenile court will require more staff and the expenditure of time—these are the expected costs of American justice.

7. The juvenile court, sheltered from both public and professional scrutiny, has become suspect to both those who are concerned with the denial of due process and those suspicious of the coddling assertedly going on in chambers. After half a century as an unproven social experiment, juvenile process needs to go more into the open and is likely to benefit from the opportunity for a public assessment.

V. ARGUMENT AND COMMENTS

The creation of the juvenile court in a "civil", "informal" and "therapeutic" image is part of an overall movement in American law which has been seeking new formats for dealing with deviate and antisocial behavior outside the traditional boundaries of criminal law. Derived from moral sensitivity, the availability of new behavioral data, and a disappointment with the past accomplishments of criminal justice, the new trend has attempted to do away with such concepts as guilt and punishment and seeks to substitute for them a terminology of illness, delinquency and therapy. Beginning a hundred and fifty years ago with the founding of mental hospitals for the civil commitment of the mentally ill, allowing for the separation

of the "lunatick" from the regular vagrant and criminal,[7] society has continuously been moving away from the traditional resort to criminal law as a primary tool of social defense. The establishment of juvenile courts in 1899[8] was another step toward the divestment of criminal law of a past sphere of jurisdiction, followed in the nineteen-thirties by the special "civil" procedures made applicable to psychopaths[9] and the recent reforms pertaining to the civil treatment of alcoholics[10] and drug addicts.[11]

All of these "civil" and "therapeutic" areas of the law share the question of whether a change in terminology, even a change in the asserted social aims and possibly even in the institutions wherein treatment is afforded, are sufficient to justify a dispensation from constitutional safeguards. This question would obviously be totally avoided if the new social aims and the treatment under them would be directed to willing clients only. It is the use of society's authority over unwilling recipients that changes all these "civil-

[7] The first hospital devoted exclusively to the mentally ill was erected in Virginia in 1773. It remained the only one in the country until the establishment of an asylum in Lexington, Kentucky, in 1824. For a history see, Deutsch, The Mentally Ill in America 42, 95 (1938); Lindman and McIntyre, The Mentally Disabled and the Law 6-14 (1961).

[8] See historical account in Vedder, Juvenile Offenders 143, 144 (1963).

[9] In 1938, Illinois became the first state to enact a sexual psychopath statute. For a history, see Lindman and McIntyre, The Mentally Disabled and the Law 298-313 (1961).

[10] Driver v. Hinnart, 356 F. 2d 761 (C.A. 4th Ct.), 1966; Easter v. District of Columbia, 361 F. 2d 50 (C.A.D.C.) 1966.

[11] See the discussion of criminal versus civil controls in Robinson v. California, 370 U.S. 66 (1962).

therapeutic'' procedures from a treatment program to a social sanction. This being the case, both a deprivation of liberty and a resultant stigma cannot be avoided. Consequently, the following questions must be squarely met in this as well as in the other "civil", "therapeutic" areas: Which of the constitutional safeguards must continue to be preserved despite the asserted change in aims and procedures? How can we prevent stifling necessary progress in the law through unnecessary insistence upon safeguards no longer needed?

A brief reference to juvenile court procedures is necessary. The juvenile court has been described as an " 'informal' court, a 'private' court and a 'therapeutic' court. That is to say, the procedures of the court are marked by informality and something of the 'conference' as opposed to 'trial' atmosphere; its business is regarded as a confidential matter . . . ."[12] Likewise, the juvenile court was conceived as a tool not of punishment but of rehabilitation, a tribunal that will carefully search into the social and psychological makeup of the youth before it in order to determine the most effective methods of treatment. Since the view was prevalent, from the inception of juvenile court, that juvenile proceedings are not criminal, it was thought unnecessary to apply to them the same substantive and procedural standards required in adult criminal proceedings.[13] Thus, it is not clear if the right to a formal hearing and to counsel applies in juvenile court proceedings in American courts.

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[12] Skoler, Juvenile Courts and Young Lawyers, 10 The Student Lawyer J. 5, 6 (1964).

[13] Sussman, Juvenile Delinquency, pp. 11-16 (1955). For a more detailed account of recent juvenile court practices in such areas as hearing, evidence and right to counsel, see Paulsen, Fairness to the Juvenile Offender, 41 Minn. L.R. 547 (1957).

In recent years, however, there has been an increased awareness and recognition that the due process concept should place "some" constitutional limitations on how juvenile courts dispose of their business.[14] Indeed, the definition of these limitations has recently become of increasing interest and concern.[15] In part, this concern has been the product of a questioning attitude towards the true contents and effect of juvenile proceedings, which may result both in a deprivation of liberty and a degree of social condemnation. "While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of a crime, nevertheless, for all practical purposes this is a legal fiction, presenting a challenge to credulity and doing violence to reason."[16] Likewise, there is evidence that the designation of a judge to hear juvenile cases does not of itself imbue him with the philosophy upon which the juvenile process is predicated. [See Davis, Iowa Judge and the Juvenile Court, 34 Iowa L. R. 634 (1949)]

Some early critics of the juvenile court procedures have based their plea for constitutional safeguards primarily on the grounds that the therapeutic aim of

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[14] Tappan, Juvenile Delinquency, pp. 172-173 (1949); Skoler, Juvenile Courts and Young Lawyers, 10 The Student Lawyer J. 5 (1964). Rubin, Protecting the Child in the Juvenile Court, 43 J. Crim. L. and Crim. 425 (1952).

[15] Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957); Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L.Q. 387 (1961); Beemsterboer, The Juvenile Court—Benevolence in the Star Chamber, 50 J. Crim. L. & Crimin. 464 (1960); Quick, Constitutional Rights in the Juvenile Court, 12 Howard L.J. 76 (1966); Allen, The Borderland of Criminal Justice (1964); Remington, Due Process in Juvenile Proceedings, 11 Wayne L. Rev. 688 (1965).

[16] In re Contreras, 241 P. 2d 631 at 633 (1952).

the court does not dispense with the need to prove initially, and within the standards of due process, the child's involvement. This would appear to be fundamental and inescapable, for delinquency is a charge to be proven not a premise on which to proceed. To hold otherwise would place the burden of proof of innocence of involvement upon the child and his parents, and further would deny them necessary aids[17] to carry this burden.

But the fear of an unsubstantiated finding of delinquency was followed by a host of other concerns: Will the judge give his most sympathetic consideration to the question of disposition unless the charged child has an opportunity to effectively present the most favorable aspects of his case? Will the most useful social solution be reached if the judge relies only on an unchallenged report by the court staff without an effective response? How are we to guarantee against undue haste, neglect and abuse in juvenile court, instead of the postulated parental patience and forebearance, when almost one-fourth of the nation's juvenile judges are not trained in the law and more than half devote less than one-fourth of their time to juvenile and family matters.[18]

"All jurisdictions have juvenile codes and all provide for less than the full set of due process guarantees available in a criminal proceeding", said the Supreme Court of Arizona in the instant case. (Jurisdictional Statement, p. 31) Thus an up-to-date survey

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[17] Cf. Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

[18] Biographical Data Survey of Juvenile Court Judges, George Washington University Center for Behavioral Sciences (monograph, 1964) pp. 10, 21.

of the widespread nation-wide denial of constitutional safeguards in juvenile court, leads inevitably to the conclusions that the adverse effects of such denial are numerous. They may be summarized as follows:

1. Our constitutional precepts do not allow for the existence of two systems for dispensing justice: one legal and the other extra-legal. No system of social sanctions, however designated, which is authorized to deprive a person of his freedom and to separate him from his family can be exempt from constitutional safeguards. It is an old observation of the classical economists that bad money pushes out and replaces the good money and, furthermore, that diverse social organs seek out their lowest common denominator. While the administration of criminal justice is undergoing a revolutionary change in this country, with a new emphasis upon individual safeguards, the juvenile process cannot be overlooked, even though characterized as civil and therapeutic. With most juvenile court judges alternating between adult and juvenile proceedings, it is apparent that a total separation of the two systems of justice is not possible. It is dubious whether the criminal aura can be kept from being injected into juvenile process and, likewise, it is questionable whether the absolute discretion of juvenile court can continue without effect upon criminal proceedings. That the two systems of justice cannot be totally separated is further illustrated by the practices of waiving jurisdiction over juveniles to adult courts (dealt with by this Court in the Kent case, 383 U.S. 541) and by the numerous questions (not previously presented to this Court) regarding double jeopardy and self-incrimination in connection with juveniles shuffled back and forth from juvenile to adult courts and even

tried as adults after first completing a juvenile "sentence" for the same offense.[19] "Actually, in about three-fourths of the states the youngster may eventually find himself in an adult penal institution as either a direct or an indirect result of juvenile court action. In about four-fifths of the states, his case can be waived to the adult court under certain conditions. In about one-half of the states, after he has been committed to and placed in an institution for juveniles, he may be transferred to an adult penal institution (see *Delinquent Children in Penal Institutions,* Children's Bureau pub., #415, 1965). Also, in a number of states, the juvenile court can commit directly to an adult penal institution. In a recent study, out of 1,087 juvenile courts, 288 or about 26% reported that they had the authority to commit directly to an adult penal institution."[20]

Emphasizing the therapeutic aims of the juvenile process does not automatically relieve it of the need for constitutional safeguards, any more than any other beneficial aims justify the means for their attainment. Even in non-criminal and administrative proceedings involving privileges and property rights, rather than personal liberty, there is a growing recognition of the applicability of constitutional safeguards. Willner v. Comm. on Character & Fitness, 373 U.S. 96, 107, 108 (1963); Kent v. Dulles, 357 U.S. 116 (1958); Murphy v. Waterfront Commission of New York Harbor, 378

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[19] See the discussion in Algase, The Right to a Fair Trial in Juvenile Court, 3 J. Family Law 292, 317 (1963).

[20] Letter of William H. Sheridan, Assistant Director, Division of Juvenile Delinquency Service, H.E.W. to Mrs. Barbara D. McGarry, American Parents Committee, Oct. 13, 1966.

U.S. 52 (1964). Cf. Aptheker v. Secretary of State, 378 U.S. 500 (1964). Also see Administrative Procedure Act, 60 Stat. 237 (1946), Secs. 5, 6, and 7 (U.S.C., Title 5, §§ 1004, 1005, 1006), which directly reflects deep Congressional concern with the provision of safeguards, equivalent to those in question here, in the administrative process.

There is little foundation to believe that the judge, the probation officer and the social worker in the juvenile process are in a better position to protect the rights of the charged child than were judges in criminal trials under the rule of *Betts* v. *Brady,* 316 U.S. 455 (1942).[21] It is inconceivable that the juvenile court, which is supposed to afford the child special protection, should deprive him of rights fought for and finally accorded to adults.

It is essential, therefore, that this Court extend to a youth in juvenile proceedings the basic rights previously recognized to exist in adult proceedings: the right to notice concerning the charge against him and adequate time and opportunity to prepare his response [Cole v. Arkansas, 333 U.S. 196 (1948)]; the right to counsel and the opportunity to have one appointed in case of need [Powell v. Alabama, 287 U.S. 45 (1932); Gideon v. Wainwright, 372 U.S. 335 (1963); Miranda v. Arizona, 384 U.S. 436 (1966)]; the right to confrontation and cross-examination of witnesses [Pointer v. Texas, 380 U.S. 400 (1965)]; the privilege against self-incrimination [Murphy v. Waterfront Commission, 378 U.S. 52 (1964); Malloy v. Hogan, 378 U.S. 1

[21] For an account of the historical development towards allowing the accused counsel and the right to testify, see Beaney, The Right to Counsel in American Courts, Ch. 2, 1955; 2 Wigmore (3d ed. 1940) § 579. Gideon v. Wainright, 372 U.S. 335 (1963); Miranda v. Arizona, 384 U.S. 436 (1966).

(1964)]; the right to a transcript and appellate review [Absent procedural safeguards, the juvenile court cannot be said to afford "a fair trial in a fair tribunal" under the standards of In re Murchison, 349 U.S. 133, 136 (1955) and an opportunity for review is therefore essential in order to correct any arbitrary and capricious abuses of discretion.]

Denial of these protections to the children who may be most in need of them cannot but fall short of "that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct" in the administration of justice. Clark, J. in Breithaupt v. Abram, 352 U.S. 432, 436 (1957).

2. The adversary system of justice still remains the best guaranty for maintaining the necessary balance between societal and individual interests and continues to afford the best protection against inequity and the abuse of discretion. The absence of counsel and failure to keep any transcript of the hearing deprives the child of needed protection while equally removing from society, which pays the bill, an important auditing and scrutiny device to protect against inadequate, wasteful or even illegal dispositions.

Despite the assertion of therapeutic aims, the juvenile process and the resultant disposition remain unnecessary unless the child's delinquency is adequately proven. The sponsors of this brief amicus curiae do not wish to burden the juvenile court with undue technicalities. Indeed, they support the proposition that we should seek ways to encourage the child's and his family's willing submission to the juvenile court program when applicable. Still, the case of Gerald Gault is a flagrant example of how informality turns into

vagueness and the parens patriae doctrine into an oppressive tool.

The testimony of the complaining witness in this case, Mrs. Cook, was never heard directly by the juvenile judge. Only the probation officer, Mr. Flagg, discussed the matter with her, over the telephone. Gault's specific role in making the obscene telephone call was never fully determined. The judge, the probation officer and the parents have different recollections of the child's own story. No witnesses were sworn in and no witnesses were cross-examined. The record in this case leads directly to the conclusion that the finding of Gerald Gault's guilt was not founded on evidence. Rather, the juvenile judge and the Arizona Supreme Court appear to have proceeded upon the premise that Gerald was a delinquent solely because he was charged with delinquency.

Subsequently, the juvenile judge reached the decision to commit Gerald Gault to a juvenile facility for an indeterminate period. What was the charge? Possibly, disturbing the peace; possibly, a habitual involvement "in immoral matters". There is no doubt that the words allegedly spoken by Gerald or his friend over the telephone were mischievous. There is doubt that, in their setting, these words were indeed malicious and of a very serious social threat.

No up-to-date report of Gerald's social and psychological background was brought before the court. The court allegedly relied on studies conducted prior to Gerald's placement on probation. Yet, in the absence of a record we have no way of assessing how extensive such previous studies were. There is no assurance that the tribunal which was specially designated to

seek out the best disposition for the juvenile indeed did its "home-work". Darkness shrouds the court's operations in the absence of constitutional spot-lights.

Thus, without an up-to-date review of the child's home conditions, and without regard to the question of the ability of both parents to cope with him, Gerald Gault was sent away to the "therapeutic" atmosphere of the Arizona State Industrial School. The discretion and the wisdom contained in this decision are of overwhelming concern not only to Gerald Gault but, also, to the public in Gila County, Arizona, and elsewhere. Is the public indeed protected by such action? Will the public expense of maintaining Gerald Gault in the Industrial School be justified in terms of his therapy or is it more likely that the commitment will turn the child into a greater public hazard after his exposure to higher forms of delinquency "education"? Absent counsel and other constitutional safeguards, no system of checks upon the juvenile judge's discretion is available to either the child or the public in Arizona. "Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions." Douglas, J., U. S. v. Wunderlich, 342 U.S. 98, 101 (1951).

That constitutional safeguards have a useful place in the non-criminal therapeutic process is illustrated by recent information regarding availability of counsel in procedures leading to civil commitment into mental institutions. This is an area in which availability of counsel was previously unknown and commitment was a foregone conclusion once a commitment petition had been filed. Making counsel available in commitment cases resulted in the startling reports that as many as 15 percent of all commitment petitions have been denied

in Cook County, Illinois, during the period of December 1, 1963 and November 30, 1964, and 35 percent of all commitments were refused in the District of Columbia during 1964.[22]

For a listing of the constructive opportunities for counsel at virtually every stage of the juvenile proceedings, see Sheridan, Standards for Juvenile and Family Courts, U.S. Dept. of Health, Education and Welfare (1966) pp. 112-114.

3. Depriving children of legal safeguards available to adults is not only objectionable from a constitutional point of view, but tends also adversely to affect the development of such children towards responsible adult citizenship.[23] Our concept of justice has traditionally emphasized procedural guaranties over human discretion, adversary process over inquisitional justice. While the introduction of additional safeguards into the juvenile court will require more staff and the expenditure of more time—these are the expected costs of American justice.

It is possible that the warmth and affection, as well as the forbearance, available within the family circle sufficiently compensate for any denial of procedural safeguards. It is doubtful, however, whether unharn-

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[22] Defender Newsletter, National Legal Aid and Defender Association, Vol. 3, No. 2, p. 2, March 1966.

[23] The sponsors of this brief, while fully supporting the juvenile court's philosophy of "individualized justice" also believe that "offenses committed by young people should not be excused or condoned. The general public should be protected, and young people need to be held responsible for the consequences of their misconduct." See "Philosophy of the Court" in Sheridan, Standards for Juvenile and Family Courts, U. S. Dept. of Health, Education and Welfare (1966) p. 1.

essed discretion even within the family helps develop the child into a responsible rules-oriented adult. The assumption that the juvenile court, to whom often the parents themselevs come with an admission of failure, can perform this idealized parental function is based on hope rather than knowledge. Until juvenile courts and juvenile institutions are demonstrated to possess, in fact, the aptitudes and services that guarantee such parental role, constitutional safeguards are necessary. Absent a personal experience with the right to be heard, to be justly even if harshly treated, the child's memories and responses regarding juvenile court and commitment are not likely to contribute to a healthy adult respect towards constituted authority.

As Justice Rutledge remarked in Prince v. Massachusetts, 321 U.S. 158, 168 (1944) "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." Whether the children who stray from the straight and narrow as some do can be expected to achieve this healthy growth if they are denied rights which they know adults to possess, is open to serious question.

That the treatment of juveniles in specialized courts is founded upon the parens patriae doctrine is not in itself dispositive of the problems involved. The decision to separate a child from its parents is indeed a weighty one, not only from the standpoint of the child, but also from that of the parents. It is a serious matter to sentence a criminal adult to imprisonment. How much more serious it is not only to confine a child, but thereby to rupture a family. The Arizona Supreme Court (Jurisdictional Statement, Appendix, p. 32) recognizes that the delinquent is "The child of, rather

than the enemy of society . . . ." Since this is the case as to all children, what is to be lost to society by accordingly the child all the protections that are accorded as of right to the enemies of society? It would seem that the burden of proof must rest on the state to show that the guaranties of notice, counsel, confrontation and cross-examination, review, transcript, and the privileges against self-incrimination will defeat or impair the purpose of the juvenile process. Still, to date, the aims of child rehabilitation have not been shown, and indeed cannot be shown, to have been impaired where due process rights have been observed in juvenile proceedings.

The sponsors of this brief amicus curiae are not unmindful of the problems inherent in opening the juvenile court to the whole range of constitutional safeguards. They certainly hope that the juvenile court is not turned into a "legalistic circus". The only protection against such developments is contained in the selection and training of both a juvenile judiciary and a ~~far~~ better fitted for the specialized function to which they must dedicate themselves. It is noteworthy, in this connection, that at this time three juvenile court judges are earmarked to cope with the host of juvenile problems in the District of Columbia, whose total population is estimated at 815,000. In West Berlin, whose population is estimated at 2,492,000, some 88 judges tend exclusively to the problems of the delinquent juvenile.[24] With a population only three times that of the District of Columbia, the Berlin courts have

[24] Logan and Kleeman, Berlin Report: Juvenile Delinquency Before the Wall and Afterward, 1963 Washington University Law Quarterly 296, 302.

29 times as many specially trained judges to handle the juvenile delinquency problem.

4. Despite its sixty-seven years of existence, little is known about the relative successes or failures of the juvenile court. In the absence of detailed records, in the absence of an opportunity for effective research or evaluation, this social experiment remains without an opportunity for progress. Sheltered from both public and professional scrutiny, the juvenile court has become suspect to those who are concerned with the denial of due process and to those suspicious of the coddling assertedly going on in chambers. After more than half a century as an unproven social experiment, juvenile process needs to go more into the open and is likely to benefit from the opportunity for a public assessment.

For the foregoing reasons, the tendency in recent years among the students as well as the practitioners of the juvenile court has been a reemphasis of constitutional safeguards. This is manifested in the Standard Juvenile Court Act (1959) prepared by the National Probation and Parole Association (now the Council on Crime and Delinquency) in cooperation with the National Council of Juvenile Court Judges and the U. S. Children's Bureau of the Department of Health, Education and Welfare. Section 19 of this Act reads as follows: "As soon as practicable after the filing of a petition, and prior to the start of a hearing, the court shall inform the parents, guardian, or custodian, and the child when it is appropriate to do so, that they have a right to be represented by counsel at every stage of the proceeding. If any of them requests it, but is found by the court to be financially unable to employ counsel, counsel shall be appointed by the court, and, if

necessary, compensated out of funds in the court's budget. Upon a final adverse disposition, if the parent or guardian is without counsel, the court shall inform them, and the child if it is appropriate to do so, of their right to appeal . . ." This section further provides that "stenographic notes or mechanical recordings shall be required as in other civil cases in the [highest court of general trial jurisdiction] . . . The general public shall be excluded . . ."

Like provisions are made in the proposed Uniform Juvenile Court Act[25] which has been prepared by a committee, under the direction of Professor Pirsig of the University of Minnesota, working in cooperation with the National Council on Crime and Delinquency and the Family Law Section of the American Bar Association. This draft, not yet approved by the Commissioners on Uniform State Laws, provides in Section 15: "(1) After the petition has been filed . . . the court . . . shall set a time for hearing and direct the issuance of a summons addressed to the child, its parents, guardian . . . requiring them to appear before the court . . . to answer the allegations of the petition . . . A copy of the petition or a summary of its allegations shall accompany the summons. (2) The summons shall state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable . . . to employ one." Section 17 of the proposed Uniform Juvenile Court Act provides further: "Hearings under this act shall be conducted by the court without a jury in an informal manner . . .

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[25] See mimeographed First Tentative Draft, Uniform Juvenile Court Act, June 3, 1966.

Minutes of the proceedings shall be kept by the court . . ." Attention should also be given to Section 19 which states: "A party is entitled to representation by counsel at all stages of the proceedings, and if unable to employ counsel by reason of his indigency, to have the court appoint counsel for him." Finally, Section 20 provides that: "A party is entitled to reasonable notice of the [facts intended to be introduced] [claims to be made] against him in the hearing, the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses appearing against him."

VI. CONCLUSION

It is, therefore, the conclusion of the sponsors of this brief amicus curiae that the best protection for both child and society requires the extension of constitutional safeguards to the juvenile process. If it is found on the basis of both past and future experience that certain constitutional guaranties are not necessary in the juvenile court, such guaranties should be specifically excluded. With the exception of such specifically excluded guaranties, the whole range of constitutional safeguards must be provided in the juvenile court.

Recognizing the importance, timeliness, and broad national application of the questions presented by this case, the undersigned file this brief in the hope that this Court's decision will establish the necessary standards of fairness for juvenile cour ts in order to give the

juvenile court a more effective role in protecting both children and society.

Respectfully submitted,

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OCT 27 1966

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

IN THE MATTER OF THE APPLICATION OF PAUL L. GAULT AND MARJORIE GAULT FATHER AND MOTHER OF GERALD FRANCIS GAULT, A MINOR.

BRIEF FOR APPELLEE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 116

IN THE MATTER OF THE APPLICATION OF PAUL L. GAULT AND MARJORIE GAULT FATHER AND MOTHER OF GERALD FRANCIS GAULT, A MINOR.

OPINION BELOW, JURISDICTION, STATUTES INVOLVED, QUESTIONS PRESENTED

Pursuant to Rule 40, Subsection 3, Rules of the Supreme Court, 28 U.S.C., Rules, as amended (1965) appellee accepts appellants' presentation of the above referenced matters.

STATEMENT OF THE CASE

I.

Gerald Francis Gault had his first contact with the Arizona Juvenile process during July of 1962, when he was thirteen years of age. Gerald had been exposed to the Gila County Juvenile Court intake screening process at that time due to a referral by the Globe, Arizona Police Department concerning a theft. (R. 61) After an investigation no hearing was held. (R. 61) Two

years later, that is on February 2, 1964, Gerald was again referred to the Gila County Juvenile Court by the Globe Police Department. Gerald had allegedly violated Arizona Revised Statutes, Section 13-663 (A) *Grand Theft*, it being alleged that another juvenile, while in the company of Gerald and another minor, had taken a wallet from a third party's purse while at a local theater. (R. 4, 5) A petition was filed on Gerald on February 7, 1964, and a hearing in this regard was held on the 25th of that month. (R. 4) Judge Robert E. McGee, Judge of the Superior Court, Gila County, Arizona, presided at that hearing. (R. 69) Gerald was placed on a six-month's probation with the explicit instruction to (1) stay out of trouble, (2) obey his mother and (3) participate in certain group sessions. At the time of that hearing, Gerald's parents were warned of future possible consequences. (R. 66) Approximately four months later, on June 8, 1964, Gerald was again apprehended, this time by the Gila County Sheriff's office on a charge of lewd phone calls. At this time Gerald was still on probation from the previous juvenile court hearing. He was again referred to the Gila County Juvenile Court for the proceedings which are the subject of this appeal.

II.

THE FACTS

Appellants' Statement of the Facts is basically a correct summarization of the testimony adduced at the habeas corpus hearing held in the Superior Court of Maricopa County on August 17, 1964. Appellee does deem it necessary, however, to point out a few inexactitudes and supplement appellants' statement of the case

with some additional facts from that habeas corpus record which appellee considers essential to establish a clear format of the case.

It is correct that two hearings were held by Judge McGee in regard to the lewd phone calls. The first was on June 9, 1964, at which time, Gerald, his mother (Marjorie Gault), Gerald's older brother, Louis, Mr. Henderson, Gila County Chief Probation Officer, and Deputy Probation Officer Charles Douglas Flagg, were present. While Gerald did not testify at the habeas corpus hearing, the evidence taken at that same hearing is undisputed that Gerald did in fact testify at the June 9, 1964, juvenile hearing. At the habeas corpus hearing, Judge McGee testified that he had questioned Gerald on June 9 and that he (Gerald) "admitted that he had called the number of the lady — I have forgotten the name. He said that he had not done *most* of the talking on this occasion, that the other boy, the Lewis boy, had done most of it." (Emphasis added.) (R. 57) That Gerald had admitted at that time that he had said some lewd words. (R. 58)

Deputy Probation Officer Flagg, who was one of the probation officers present at the June 9th hearing, also testified at the habeas corpus hearing. He did *not* testify that "Gerald did not admit having made any lewd remarks and only dialed the number." (Appellants' Opening Brief, p. 6), nor did Deputy Probation Officer Flagg testify that "Gerald had never admitted to him that he used any indecent language over the telephone (R. 57)." (Appellants' Opening Brief, p. 7) To the contrary, Mr. Flagg testified that while both Gerald Gault and Ronald Lewis tried to place the blame

on each other during the June 15th hearing, Gerald had in fact, during the June 9th hearing, admitted making the phone call and saying the lewd words. (R. 45, 47)

During the habeas corpus hearing on August 17, Mrs. Marjorie Gault was asked by presiding Judge Fred A. Hyder if she knew at the time of the June hearings, of her right to have a lawyer to which Mrs. Gault answered in the affirmative. (R. 40) Mrs. Gault also indicated that, at the time of the hearing, she knew she could subpoena witnesses. (R. 40) She also testified that while she did not receive a copy of the June 9, 1964, petition, she was aware of the contents of the petition. (R. 40)

Deputy Probation Officer Flagg also testified at the habeas corpus hearing that he and Probation Officer Henderson had investigated the case. (R. 48) While it is correct as appellants assert (Appellants' Opening Brief, pp. 7, 8) that during June of 1964 no investigation was made to examine Gerald's home conditions, nowhere in the record is it substantiated that Probation Officers Flagg and Henderson did not conduct an examination into Gerald's behavior. To the contrary, Flagg testified that he did investigate the case from the 8th of June until the 11th of June. (R. 48, 49) As to an investigation of the condition of the Gault home, it is correct that Flagg had done so four months prior during the period when the first delinquency hearing on Gerald had been conducted.

III.

THE DECISION OF THE ARIZONA SUPREME COURT

On November 10, 1965, the Supreme Court of the State of Arizona affirmed the order of the Superior Court of Maricopa County in dismissing petitioner's writ of habeas corpus. The Court grouped the assignments of error presented to it into three categories. First, that the Arizona Juvenile Code, A.R.S., Sec. 8-201, *et seq.* was unconstitutional because it failed to appraise parents and children of the specific charges, did not require timely, adequate and proper notice of a hearing and did not provide for an appeal. Second, that the Juvenile Court, in fact, denied petitioner's due process of law by failing to provide proper notice of the charge and the hearing, failing to notify them of certain constitutional rights, by relying upon unsworn hearsay testimony, by failing to make a record and by removing custody of Gerald Francis Gault from his parents without a showing of their incompetency or inability to properly care for him. Third, miscellaneous errors pertaining to the habeas corpus proceeding and young Gault's original detention during June of 1964. (407 P.2d at 763, 764; R. 85, 86)

The Arizona Supreme Court in answering all assignments of error, held that the Arizona Juvenile Code was constitutional and petitioners were not denied due process of law as such pertained to the judicial course of events which led to Juvenile Judge McGee's commitment order. In holding the Arizona Juvenile Code to be constitutional and not in violation of procedural due process as required by the United States Constitution,

Article XIV, Section 1 and Article II, Section 4 of the Arizona Constitution, the court recognized that said code, in part, required the following:

1. That a parent or guardian and anyone whose rights may be affected by the court's determination, must be notified of the juvenile hearing by personal service if possible and such notice must be given a reasonable time prior to the hearing. (*Id.* at 766; R. 91)

2. That the powers of the Juvenile Court may be exercised upon the filing of a petition alleging that the child is delinquent but not the facts upon which the allegation is based. (*Id.* at 764; R. 86)

3. That the child and parent or guardian must be advised of the facts involved in the case no later than the initial hearing by the judge. (*Id.* at 767; R. 92)

4. If the charges are denied, the child and parent must be given a reasonable period of time to prepare. (*Ibid.*)

5. That the Arizona and United States guarantee of due process of law exists in the Arizona Juvenile Code. (*Id.* at 765; R. 88)

6. That the statutory requirement for a hearing under the Juvenile Code means a hearing in a substantial sense meeting the requirements of due process. (*Ibid.*)

7. That the Arizona Constitution (Art. VI, § 15) and Arizona Revised Statutes, § 8-229 require that juvenile hearings be held informally and in chambers. (*Id.* at 764; R. 87)

8. That the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. (*Id.* at 767; R. 92)

9. That the Juvenile Court always has discretion to allow legal representation. (*Ibid.*)

10. That due process does not require that an infant have a right to counsel. (*Id.* at 767; R. 93)

11. That the Arizona Juvenile Code does not require a juvenile judge to advise an infant of a privilege against self-incrimination. (*Ibid.*)

12. That under Arizona law there is no right of appea from a juvenile court order. (*Id.* at 764; R. 86)

13. That since there is no right of appeal and since the evidence adduced at a juvenile hearing is of a confidential nature and may not be admitted in other courts, the ordering of a transcript at a juvenile hearing is entirely within the discretion of the juvenile court. (*Id.* at 768; R. 94)

In regard to the contention that the juvenile court, in fact, denied petitioner's due process of law, the court opined (*ibid.*),

"Applying all of the above requirements to the hearing under review, we find that petitioners were not denied due process of law. Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home. She and Gerald appeared at the first hearing without objection. Mr. and Mrs. Gault, together with Gerald, appeared at the second hearing before Judge McGee without objection. Petitioners knew they could have retained counsel, called witnesses and cross-examined Probation Officer Flagg."

SUMMARY OF ARGUMENT

I.

The history of the Juvenile Court will indicate that it was created to afford individualized justice for the child. Further, the purpose was to shield the child from the stigma of criminality when the acts he performed would otherwise subject him to the criminal system. Rehabilitation was to be substituted for punishment. The State acts as *parens patriae*. These principles are as important today as they were in the year one of the juvenile court system. Appellee is the first to agree that the child in a juvenile court proceeding is entitled to due process of law but the question necessarily posed is what constitutes due process in such a proceeding. In answering this question one must be mindful not only of the specific rights involved as they relate to other areas of the law, but also of the nature of the proceeding and its devout attempt to avoid the non-adversary approach to juvenile problems. The Arizona Juvenile Code is framed in the spirit of the traditional juvenile court. It protects the child of tender years and provides him with due process of law. With more particularity, it provides due process in the areas henceforth to be noted.

II.

The Gerald Francis Gault hearings during 1964 were two of three hundred and sixty-five[1] held in Gila County that year before the Honorable Robert E. Mc-

[1] The yearly report of the Gila County Probation Department indicates that of six hundred and thirty-five cases handled, two hundred and seventy were adjusted at intake and three hundred and sixty-five were heard before the Juvenile Court, of which eleven were sent to the Ft. Grant Industrial School.

Gee, Gila County's lone Superior Court Judge.[2] Those hearings were conducted pursuant to the Arizona Juvenile Code which contemplates three phases of a juvenile hearing. First, jurisdictional, second, adjudicatory, and third, dispositive. The June 9th hearing was a jursidictional and adjudicatory hearing insofar as it resolved the question of Gerald's delinquency. The June 15th hearing was necessarily dispositive in nature since the decision to commit Gerald to the industrial school at Ft. Grant was made at that time. The Arizona Act further contemplates that if the child denies the act involved at the jurisdictional phase *then* he and his parents must be given a reasonable time to prepare a defense for the subsequent full-scale adjudicatory hearing. If, as here, the act is admitted, the court has completed both the jurisdictional and adjudicatory phases of the proceeding.

III.

The Arizona Juvenile Code requires notice of the hearing to the parent or guardian by personal service if practical. On June 8th, Mrs. Gault was personally notified of the hearing to be held the following day. At that time, she was informed of the nature of the charges against Gerald and she was further informed of the time and place for the hearing. She voluntarily appeared at the June 9th hearing where she was again informed of the general nature of the charges against her son. Mr. and Mrs. Gault were given written notice of the June 15th hearing on June 12th and both parties

[2] Art. 6, § 10 of the Arizona Constitution provides that each county shall have at least one judge of the Superior Court and each county may have additional judges, not exceeding one judge for each 30,000 inhabitants or majority fractions thereof. According to the 1960 census Gila County has a population of 25,745.

voluntarily appeared at the latter hearing. We submit petitioners were provided with procedural due process of law in this regard.

IV.

The Arizona Supreme Court held that due process of law in regard to a juvenile hearing does not require that an infant have a right to appointed counsel. However, the parents of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing. Mrs. Gault testified during the habeas corpus hearing that at the time of the June 9th and June 15th hearings she was aware of her right to retain counsel. We do not see where the Arizona Juvenile Code is unconstitutional in this respect, nor do we see where, on the facts, petitioners were denied due process of law.

V.

Gerald Francis Gault admitted to Judge McGee during the June 9th jurisdictional and adjudicatory hearing that he had said some of the lewd words. This admission obviated the need for a full adjudicatory hearing. On this basis appellee contends that there was no necessity for a confrontation with the complaining witness nor a cross-examination of her. We submit that while an infant and his or her parents are entitled to confrontation and cross-examination when the charges are denied, said argument has no relevance in this case.

VI.

The Arizona Supreme Court did not hold that a juvenile does not have a privilege against self-incrimi-

nation. That court held only that the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant against self-incrimination. A preponderance of cases and the views of experts in this field will bear appellee out that to warn the child of this privilege will not enhance the effective operation of this specialized tribunal. There was no violation of due process in this case when appellants were not so warned.

VII.

Due process of law does not require appellate review from a juvenile court decision. The Arizona Juvenile Code does not provide for such, even though the order of a juvenile judge is subject to review by other means, such as certiorari. Since there is no right to appeal and since evidence presented in a juvenile proceeding is confidential and cannot be used in another court, due process of law has not been violated merely because no transcript has been made and because a discretion for the taking of such a transcript is vested in the juvenile judge.

ARGUMENT

I. THE ARIZONA JUVENILE CODE IS CONSITUTIONAL.

A. Background.

It may be said, with considerable justification, that the intentions of the originators of the first juvenile courts in this country toward the end of the 19th Century were benevolent. It is also axiomatic that prior to the inception of the juvenile court the punitive ri-

gors of the law were applicable to adults and children alike. With the advent of social work, as we know it today, which also had its inception during the last decades of the 19th Century, and the demand for social legislation during the same period, one can well fathom its resultant effect on the law in the field at hand. The increased recognition of a need for a more perfect balance between the general security of society and the individual led to the individualization of justice as to juveniles. The original juvenile court in Cook County, Illinois, as well as present day courts of a similar nature, function on a socio-legal basis, where the purpose is therapeutic and preventive, rather than retributive and punitive.

Since this appeal is based primarily on alleged deficiencies in the Arizona Juvenile Code and since that code was enacted in the same spirit which created that first juvenile court, emphasis must necessarily be placed on the basic philosophy behind the juvenile court, for a consideration thereof will have a direct and causative bearing on the meaning of due process as that constitutional phrase applies to juvenile court proceedings. Arizona's position is similar to that of other jursidictions in that it is felt that the function of the juvenile court will be destroyed if injected with the rights of due process as construed in the criminal system.

Roscoe Pound in commenting on the juvenile courts once stated:

> "What is meant by saying that the jurisdiction of the juvenile court is equity jurisdiction is well

brought out in the report of the Committee of the Chicago Bar Association in 1899. What the committee then said deserves to be repeated:

> 'The fundamental idea of the [juvenile court] law is that the state must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime .... It proposes a plan whereby he may be treated, not as a criminal, or legally charged with a crime, but as a ward of the state, to receive practically the care, custody, and discipline that are accorded the neglected dependent child, and which, as the act states,
>
> > 'shall approximate as nearly as may be that which should be given by its parents.'

"It is equity jurisdiction, the jurisdiction of the Chancellor in England, representing the King as parens patriae with respect to infants, the legal term for persons under age. As such it has five characteristics of equity jurisdiction: (1) It is relatively informal in its procedure — a characteristic going back to the origin of English equity, when one who sought relief in equity presented to the Chancellor an English bill, that is, an informal petition in English, whereas one who sought relief in a court of law had to buy a Latin writ and follow it up with a formal statement of his case (called a declaration), likewise in Latin. (2) As with all equity jurisdiction it is remedial, not punitive. (3) It acts preventively in advance of commission of any specific wrongdoing. (4) It employes administrative rather than adversary methods. (5) It can adapt its action to the circumstances of individual cases and so achieve a high degree of individualization, which is demanded by justice, if not always by security."[3]

[3] Pound, *The Juvenile Court and the Law*, 10 *Crime and Delinquency*, 490, 498.

Those characteristics remain extremely important today. The *parens patriae* doctrine remains a sound and purposeful doctrine. If the basic principle of *parens patriae* is accepted it is easily seen why informality is the norm. If such a system is to succeed in practice as much taint as possible of an adversary system must be avoided. It is no wonder that the following suggestion of the setting for a juvenile court hearing is made by the Advisory Council of Judges of the National Council of Crime and Delinquency:

> "The arrangement of the juvenile court should create a conference atmosphere, with the dignity which inspires respect for the court. Three basic principles are suggested in the design of a courtroom. (1) The bench or desk should not be elevated, the judge's chair should be at the same level as other chairs in the room. (2) The courtroom itself should be simple in design with no emphasis on formality. (3) Accommodations should be provided to seat the child and his parents as well as others present. If children and parents are grouped informally directly in front of and relatively close to the judge the arrangement may reduce tension and emphasize the conference atmosphere of the hearing." [4]

B. The Arizona Juvenile Code.

The Arizona Supreme Court decision below is not without precedent. Attacks, similar to the one herein involved, on juvenile legislation alleging the absence of certain constitutional guarantees, have, in the vast majority of cases, been rejected. As early as 1907 it

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[4] Guides for Juvenile Court Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency (1963), *Court Hearings*, p. 57

was held in the case of *Mill v. Brown,* 31 Utah 473, 88 Pac. 609 that:

> "Other constitutional and legal objections respecting the right to trial by jury, the want of arraignment in plea, the suspending of judgment or sentence, the manner of examination or trial, that the child is required to be a witness against himself, the want of notice to the parent, the dispensing with a warrant and arresting of the child and bringing him before the court, and all like questions, are fully, learnedly and satisfactorily discussed and decided against the contentions of appellant in the following cases:
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> "*Commonwealth v. Fisher* (Pa.) 62 Atl.198; *Milwaukee Industrial School v. Supervisors of Milwaukee County,* 40 Wis. 328, 22 Am. Rep. 102; *Prescott v. The State,* 19 Ohio St. 184, 2 Am. Rep 388; *Farnham v. Pierce,* 141 Mass. 203, 6 N.E. 830, 55 Am. Rep. 452; *State v. Home Society,* 10 N.D. 493, 88 N.W. 273; *Reynolds v. Howe,* 51 Conn. 472; *Ex parte Liddell,* 93 Cal. 633, 29 Pac. 251; *Ex parte Nichols,* 110 Cal. 651, 43 Pac. 9; *State v. Phillips,* 73 Minn. 77, 75 N.W. 1029; *In re Mason,* 3 Wash. St. 609, 28 Pac. 1025; *In re Kelley,* 152 Mass. 432, 25 N.E. 615; *State v. Kilvington* (*Tenn.*) 45 S.W. 433, 41 L.R.A. 284; *Matter of Knowack,* 158 N.Y. 482, 53 N.E. 676, 44 L.R.A. 699; *Jarrard v. The State,* 116 Ind. 98, 17 N.E. 912; *State v. Brown,* 50 Minn. 353, 52 N.W. 935; 16 L.R.A. 691, 36 Am. St. Rep. 651; *State v. Marmouget,* 11 La. 225, 35 South. 529." [5]

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[5] For more recent cases holding a juvenile proceeding may properly dispense with formal constitutional requirements relating to criminal proceedings, see: *Petition of Morin,* 45 N.H. 518, 68 A.2d 668 (1949); *Commonwealth v. Henig,* 200 Pa.Super. 614, 189 A.2d 894 (1963); *In re Bigesby,* D. C. App. 202 A.2d 785 (1964); *In re Rich,* 216 A.2d 266 (1966); *Ex parte Post,* 199 Misc. 1075, 107 N.Y.S.2d 896; *aff'd, Application of Post,* 113 N.Y.S.2d 475, 280 App. Div. 268; appeal dismissed, *Post v. Lyford,* 126 N.Y.S.2d 927; *White v. Reid,* 125 F.

The reason for the court's position in that case is easily seen in the following statement by the court as to juvenile laws:

> "Such laws are most salutory and are in no sense criminal and not intended as punishment, but are calculated to save the child from becoming a criminal."

Case law on the subject subsequent to that 1907 Utah case is replete with a reiteration of that same fundamental concept.[6] In the much cited juvenile case of *In re Holmes,* the Supreme Court of Pennsylvania used the following language:

> "Such claims [of unconstitutionality] however, entirely overlook, in our opinion, the basic concept of a juvenile court. Proceedings in such a court are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and the rehabilitation of the minor child. Their purpose is not penal but protective, —

Supp. 647 (D.C.D.C.) (1954); *In re Lindh,* 11 Utah 2d 385, 359 P. 2d 1058 (1961); *Hampton v. Stevenson,* 210 Ga. 87, 78 S.E.2d 32 (1953); *In re T.W.P.,* Fla. App. 184 So.2d 507 (1966); *Minor Children of F.B. v. Caruthers,* 323 S.W.2d 397 (1959); *U.S. v. Borders,* 154 F.Supp. 214 (D.C.N.D. Ala.) (1957), *aff'd Borders v. U.S.,* 5 Cir. 1958, 256 F.2d 458.

[6] In upholding the constitutionality of juvenile court acts, the courts have also emphasized that not only are the proceedings non-criminal, but also that the institution to which the delinquent is committed is not of a penal character. For example see *Ex parte Januszewski,* C. C. Ohio, 196 F. 123 (1911); *Ex parte State ex rel. Echols,* 245 Ala. 353, 17 So.2d 449 (1944); *Dendy v. Wilson,* 142 Tex. 460, 179 S.W.2d 269 (1944), 151 A.L. R. 1217; *Wissenberg v. Bradley,* 209 Iowa 813, 229 N.W. 205 (1930), 67 A.L.R. 1075; *Bryant v. Brown,* 151 Miss. 398, 118 So. 184 (1928), 60 A.L.R. 1325; *Ex parte Daedler,* 194 Cal. 320, 228 P.467 (1924); *Cinque v. Boyd,* 99 Conn. 70, 121 A. 678, (1923); *Ex parte* King, 141 Ark. 213, 217 S.W. 465 (1919); *Ex parte Birchfield,* 90 O.Cr. 197, 212 P.2d 195 (1949); *White v. Reid,* 125 F. Supp. 647 (D.C.D.C.) (1954). Other courts have indicated that juvenile laws do not contemplate restraining the natural liberty of children but rather the placing of them under the natural restraint similar to that which a parent exercises over a child. *See In re Santillanes,* 47 N.M. 140, 138 P.2d 503 (1943).

aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the state acting as *parens patriae*. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life. . . . No suggestion or taint of criminality attaches to any finding of delinquency by a juvenile court. The conception that children are regarded as wards of the state is not one of recent origin; indeed from the very earliest times children in England were regarded as wards of chancery, and the chancellor exercised the prerogatives of the Crown in acting for the care, treatment and protection of unfortunate minors and placing them under proper guardianship." 379 Pa. 599, 109 A.2d 523 at 525 (1954), *cert. denied* 348 U.S. 973 (1955).

This same philosophy prompted the Arizona Supreme Court to hold as it did in the *Gault* decision. The Arizona Supreme Court did hold that a juvenile is entitled to due process in a juvenile hearing (R. 89, 90), but recognized that the problem was in ascertaining the particular elements which constitute due process in a juvenile hearing. (R. 90) [7]

It is generally recognized that a state legislature has the power to say that an act done by a child shall not be a crime or punishable as such even though the same act constitutes a crime if done by an adult.[8] The State

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[7] The Arizona Supreme Court had already held due process as being applicable to juveniles in prior court decisions. See *Arizona State Department of Public Welfare v. Barlow*, 80 Ariz. 249, 296 P.2d 298 (1956).

[8] *State v. Gronna*, 79 N.D. 673, 59 N.W.2d 514 (1953).

of Arizona has legislated on this subject and by law "An adjudication by a juvenile court upon the status of a child shall not operate to impose any civil disability nor shall a child be deemed a criminal by reason thereof. An adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged with or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution."[9]

The Arizona Supreme court recognized that a juvenile proceeding is a noncriminal proceeding.[10] (R. 94) We submit the "fundamental fairness concept" embodied in the Fourteenth Amendment is satisfied in a juvenile court proceeding even though normal constitutional safeguards applicable in criminal jurisprudence, are not applied in a juvenile court. Further, the Arizona supreme Court subscribes to the view that the Arizona Juvenile Code is constitutional in terms of the requirements of due process of law.

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[9] A.R.S., § 8-228 (A).

[10] For recent decisions holding a juvenile proceeding is not a criminal procedure see *In re Whisaker*, 134 F.Supp. 864; (D.C.D.C.) (1955); *In re Poff*, 135 F. Supp. 224 (D.C.D.C.) (1955); *In re Dargo*, 81 Cal. App. 2d 205, 183 P.2d 282 (1947); *In re O'Day*, 83 Cal.App.2d 339, 189 P.2d 525 (1948); *In re Magnuson*, 110 Cal. App.2d 73, 242 P.2d 362 (1952); *Dart v. Mecum*, 19 Conn.Supp. 428, 116 A.2d 668 (1955); *Hewlett v. Probate Ct.*, 66 Idaho 690, 168 P.2d 77 (1946); *In re Tillotson*, 225 L.A. 573, 73 So.2d 466 (1954); *State v. David*, 226 L.A. 268, 76 So.2d 1 (1954); *State v. Harold*, 364 Mo. 1052, 271 S.W.2d 527 (1954); appeal transferred 281 S.W.2d 605; *Application of Giroffi*, 130 N.Y.S.2d 28, 283 App.Div. 890 (1954); *Ex parte Lewis*, 850 Okla.Cr. 322, 188 P.2d 367 (1947); *In re Mont*, 175 Pa.Sup. 150, 103 A. 2d 460 (1954); *State v. Ferrell*, 209 S.W.2d 642 (1948); *State v. Lazaros*, 228 S.W.2d 972 (1950); *State ex rel Henkle v. Skeen*, 75 S.E.2d 223 (1953), *cert. denied Henkle v. Skeen*, 73 S.Ct. 954, 345 U.S. 967, 97 L.Ed. 1385; *Cope v. Campbell*, 175 Ohio St. 475, 196 N.E.2d 457 (1964); *In re T.W.P.*, Fla.App. 184 So.2d 507 (1966); See also *Pee v. U.S.*, 107 U.S.App.D.C. 47, 274 F.2d 556 (1959) wherein the court listed decisions eminating from the highest courts of forty-two states holding to the same effect.

II. GERALD FRANCIS GAULT WAS PROVIDED WITH A FAIR AND PURPOSEFUL HEARING IN ACCORDANCE WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

A. Notice of Charges and Hearing.

Appellants' Brief (p. 30) alleges that:

> "Notice to be fully effective must contain at least three ingredients: (1) it must state what acts are complained of (2) it must state what statute or applicable rule of law such acts violate, and (3) it must give some indication of the consequences of a finding against the accused. All of these were absent in the proceedings below."

The court below most assuredly held that a fair hearing encompasses notice being given to the parent or guardian and anyone whose rights may be affected by the court's determination. (R. 91) The Arizona court also held that such notice must be given a reasonable time prior to the hearing. (R. 91) It was further held that as to the contents of the notice, the child and parent must be informed of the alleged act of delinquency before an adjudication of the delinquency is made. (R. 91) Appellants have arrived at the rather curt conclusion that the notice given to Mrs. Gault was non-official. (Appellants' Opening Brief, p. 30) Indeed, notice of the June 9th hearing, although not written, was communicated to Mrs. Gault by Deputy Probation Officer Flagg, who was certainly on "officer" involved in the case.[11]

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[11] See also *In re Patterson*, 27 Cal.Reptr. 10, 377 P.2d 74 (1962) where the question arose as to whether notice, by telephone, to a juvenile's only available parent the day before a detention hearing, was sufficient notice. The court held that it was and that it constituted due process of law. The California Supreme Court quoted the following cases: *Drummy v. State Bd. of Funeral Directors*, 13 Cal.2d 75, 80 [2] 87 P.2d 848; *Litchfield v. County of Marin*, 130 Cal.App.2d 806, 813 [7] *et seq.*, 280 P.2d 117.

The day before the first hearing, Deputy Probation Officer Flagg orally told Mrs. Gault why Gerald was being detained for the hearing. (R. 44) In Flagg's own words, he "explained the whole thing to her . . . " and that he "told her why Jerry was there . . ." (R. 44) Mrs. Gault confirmed that this conversation took place. (R. 29) As to further notice of the charges, Mrs. Gault testified at the habeas corpus hearing that at the June 9th hearing she was informed of the general nature of the charges (R. 38) and that she knew that it concerned an allegedly indecent phone call. (R. 38) This information conveyed to Mrs. Gault, supplemented the oral notice she was given the previous day by Deputy Probation Officer Flagg. Assuming Gerald had denied the commission of the act involved (thereby necessitating a full adjudicatory hearing) *then* the Gaults would have been entitled to a further reasonable period of time in which to prepare a defense. The necessity for this in the present case was obviated by Gerald's admission on June 9th.

As to a possible requirement of a juvenile court judge to warn parents of possible consequences of a juvenile hearing, appellee knows of no such rule, and appellants have cited no cases on the subject. However, even if there was such a requirement, the Gaults certainly had knowledge of possible consequences since Judge McGee had warned them of such during February of 1964. (R. 66)

The contention has also been made by appellants that Judge McGee testified at the habeas corpus hearing that he had based his finding of delinquency not only on the boy's use of lewd language but also on the boy's

habitual involvement in immoral matters (Appellants' Opening Brief, p. 32) Judge McGee had referred to the July 1962 incident pertaining to a theft which never resulted in a hearing. However, in continuing, he stated that in his mind the decision of delinquency was done on the admission of Gerald Gault. (R. 65) A clear inference of this testimony by Judge McGee is that the *disposition* of the Gault matter rested not only on the lewd telephone call but on other factors as well. Also, there was ample proof to sustain the judgment of the court without the evidence in question.[12] In light of the judge's own statement, that he had based his decision on the admitted phone call plus the fact that Gerald had violated his probation, no error is discernable.

It is appellee's position that the Arizona Juvenile Code, as interpreted by the Arizona Supreme Court, provides for adequate notice of the charges and hearing, and that appellants certainly received adequate notice in this case.

B. The Right to Counsel.

The question of whether an infant has the right to appointment of counsel in a juvenile court proceeding must be viewed in the light of the nature of the hearing itself. Appellants' reliance on such cases as *Gideon v. Wainwright,* 372 U.S. 335 (1963) and *Powell v. Alabama,* 278 U.S. 45 (1932) not only indicates their

[12] For cases holding a judge's reliance on a social report non-prejudicial error if sufficient traditional evidence exists, see: *In re Mont.,* 175 Pa.Super. 150, 103 A.2d 460 1954; *In re Brown,* 201 S.W.2d 844 (Tex.Civ.App) (1947); *Harry v. State,* 246 Wis. 69, 16 N.W.2d 390 (1944); *Williams v. State,* 219 S.W.2d 509, 515 (Tex.Civ.App) (1949); *In re Garcia,* 201 Cal. App.2d 662, 20 Cal.Rptr. 313 (1962).

zeal to equate a juvenile hearing with a criminal trial[13] but further they ignore the very premise upon which the Arizona Supreme Court resolved this issue. The entire juvenile court concept endeavors to remove all taint from an adversary system for the obvious reason that such a system would undermine the informal approach to juvenile problems. The philosophy of shielding children from traditional criminal court procedures, their atmosphere and concomitants is still an admirable approach of juvenile jurisprudence. The Arizona Supreme Court, in holding that due process does not require that infants have a right to counsel, aligns itself with those vast majority of jurisdictions which have similarly held. The decisions emanating from those jurisdictions are legion.[14]

In *Shioutakon v. District of Columbia,* 236 F.2d 666 (D.C.Cir.1956), cited by appellants as being for the proposition that the right of a child and his parents to the assistance of counsel in a juvenile proceeding is founded in due process (Appellants' Opening Brief, p. 39), the United States Court of Appeals, District of Columbia Circuit indicated that their decision, that a juvenile in juvenile court must be advised of a right to counsel or to have counsel appointed in his behalf, was not based on a consideration of due process but

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[13] Even this Court in *Kent v. United States,* 383 U.S. 541 (1966), noted that juvenile court proceedings are designated as civil rather than criminal.

[14] See for instance *People v. Dotson,* 46 Cal.2d 891, 299 P.2d 875 (1963); *People ex rel Weber v. Fifield,* 136 Cal.App.2d 741, 289 P.2d 303 (1955); *White v. Reid,* 125 F.Supp. 647 (D.C.D.C.) (1954); *In re Poff,* 135 F.Supp. 224 (D.C.D.C.) (1955); *Akers v. State,* 115 Ind.App. 195, 51 N.E.2d 91 (1943); *People v. Lewis,* 60 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001 (1932); *cert. denied* 289 U.S. 709, 77 L.Ed. 1464, 73 S.Ct. 786; *In re Holmes,* 379 Pa. 599, 109 A.2d 523 (1954), *cert. denied* 348 U.S. 973, 99 L.Ed. 757, 75 S.Ct. 535; *Rooks v. Tindall,* 138 Ga. 63, 76 S.E. 378 (1912).

was based on an interpretation of the applicable statute (see footnote 18 on page 669 of that opinion).

The decision in *Pee v. United States,* 107 U.S.App. D.C. 47, 274 F.2d 556 (1959) handed down three years later by the same court was to the effect that, "The constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases." (274 F. 2d at 559) *Black v. United States,* 383 U.S. 541 (1966) also cited by appellants concerned a "waiver" proceeding identical to the issue in *Kent v. United States,* 383 U.S. 541 (1966) recently decided by this Court. The *Kent* decision would appear to have been based, insofar as a "waiver" was concerned, on a construction of the District of Columbia's Juvenile Court Act and not on the basis of constitutional guarantees.

Appellants further contend that although a judge may see to it that a juvenile is dealt with justly and fairly he "cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional." (Appellants' Opening Brief, p. 38) Apparently forgotten, however, is the intake procedure of the juvenile court itself. Juveniles are brought before members of the probation staff to the court. Not only do these professionals make social investigations for the court but they do counselling as well.

Further, it must be realized that few of the juveniles

brought before a juvenile court deny the offense named or involvement therein.[15]

In deciding whether procedural fairness demands an attorney it must be asked whether an attorney would aid a juvenile hearing and if so to what effect. An Arizona Juvenile Judge, commenting on the need for appointed counsel in juvenile hearings has stated:

> "As one can gather, the writer does not believe that there is much to be gained by any insistence upon legal counsel in juvenile court. Lawyers are so indoctrinated in the adversary procedure and philosophy that the writer believes that for the most part it will be impossible for them to take an active part in a juvenile court hearing without destroying to some extent the nonadversary nature thereof."[16]

If the concept of procedural due process requires the appointment of counsel the resultant situation will most certainly, in many instances, result in the juvenile court being relegated to a junior criminal court. If the juvenile in every instance is entitled to counsel, who will represent the state? If the local prosecutor must do so, is it not true that the proceeding has acquired all the aspects of an adversary proceeding? It is the contention of appellee that this is exactly what must be avoided.

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[15] Judge Paul W. Alexander, Judge of the Court of Common Pleas of Lucas County, Ohio, estimated that ninety-nine percent of the children brought before juvenile judges admitted involvement. *Alexander, Constitutional Rights In Juvenile Court,* 46 A.B.A.J. 1206 at 1208 (1960). In *Guides For Juvenile Court Judges,* it is stated that "the child in the vast majority of cases involving delinquency will admit the allegations in the petition." *Ibid.* p. 60.

[16] *Maloy, Juvenile Court—A Labyrinth of Confusion For The Lawyer,* 4 Ariz. L.Rev. 1 at p. 23 (1962).

As previously noted, the Arizona Supreme Court has declared that in those cases, where, in the presiding judge's discretion, an attorney is needed, one may be appointed. Such a tailor made approach to each individual case would be far more beneficial than a rule absolute as contended by appellants.

C. Confrontation and Cross-Examination

The wide proclamations in appellants' brief in regard to confrontation and cross-examination, while basically a correct analysis of the law in criminal cases and in administrative hearings under different circumstances, have not been correlated to the fact situation involved in this appeal. Appellants have diminutized the fact that at the June 9, 1964, hearing in the presence of Judge McGee, Gerald admitted making the telephone call and admitted saying some of the lewd words. (R. 45, 47, 57) As previously noted it is a misstatement of the record to allege that "Gerald Gault had not admitted to him (Probation Officer Flagg) making any lewd or indecent remarks over the telephone but said the other boy engaged in the conversation . . . " (Appellants' Opening Brief, p. 48) The actual statement by Probation Officer Flagg was that at the June *15th* hearing Gerald did not admit any of the more serious lewd statements (R. 59) but at the June 9th hearing Gerald had so confessed. (R. 45, 47) We are, therefore, dealing with a case where the infant has made an admission. This is a factor completely nonexistent in the cases cited by appellants in their argument of the immediate issue. Nor do those excerpts from *Wigmore on Evidence* (Appellants' Opening Brief, pp. 44, 45) address themselves to situations where the juvenile admits the fact alleged.

In the relatively early case of *People v. Lewis,* 260 N.Y. 171, 183 N.E. 353 (1932), the Court of Appeals of New York was faced with a strikingly similar situation and stated:

> "Even in a criminal trial the confession which requires corroboration to sustain conviction is only the extra-judicial confession, not the admission made in open court on the witness stand. If the hearing here had been a criminal trial its sole defect would have been the failure to warn against self-incrimination. But it was not a criminal trial and there was no defect." Id. at 354)

Also in the case of *In re Patterson,* 27 Cal. Reptr. 10, 377 P.2d 74 (1962) the Supreme Court of California had the same issue before it. The court responded as follows:

> "In addition to the report that was received in evidence when the minor appeared before the court, the charges were read, and he admitted their truth in open court. The testimony of an accused at his trial not only establishes the corpus delicti of the offense but is sufficient to justify a judgment. (Citations omitted) . . . It is likewise settled that the admission by a minor of the charges against him in open court is the equivalent of a plea of guilty and therefore raises no issue of fact and precludes the necessity for the presentation of evidence in support of the allegations contained in the petition. (*In re Dargo,* 81 Cal.App.2d 205, 208[4] *et seq.*, 183 P.2d 282 [hearing denied by the Supreme Court]; *Cf. People v. Johns,* 173 Cal.App.2d 38, 42 [2, 3] 343 P.2d 92)." (377 P.2d at 77)[17]

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[17] As to the admissibility of juvenile admissions in juvenile courts generally, see *Juvenile Delinquency—Evidence,* 43 A.L.L.2d 1133, § 4.

We submit the court below was correct in its decision that the relevancy of confrontation only arises where the charges are denied. Appellee fails to see any bearing in appellants' contention that "this attitude turns topsy-turvy the concept of the juvenile hearing as an adjudicatory proceeding to determine the facts based on evidence" (Appellants' Opening Brief, p. 49) especially in light of appellants' earnest attempt to equate a juvenile hearing to a criminal proceeding where admissions also tend to obviate any issue of fact.

Appellee further fails to see the value of appellants' contention (Appellants' Opening Brief, Note 35) that confrontation and cross-examination would rarely become relevant under the lower court's decision and would have the dangerous consequence of reducing the adjudicatory hearing to an insubstatnial stage in the juvenile court process. It is quite obvious that this was not the intent of the court below nor will the concomitant result be as hypothicated by appellants. It is submitted that the above statement by appellants avoids the significance and import of the infant's admission.

D. The Privilege Against Self-Incrimination.

The Arizona Supreme Court held, "We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination." (R. 93)

It will be noted that the court did not hold the infant did not have such a right but only that the juvenile

judge did not have to advise him of such. Appellee is aware of the decision rendered by this Court in *Miranda v. Arizona,* 16 L.Ed.2d 694 (1966) wherein the Court held that "in order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." The *Miranda* case, of course, concerned itself with the privilege against self-incrimination during a period of custodial interrogation of an adult by police officers. Appellee is not of the opinion, however, that the strict requirement of informing the juvenile of a right to remain silent should be exacted during a juvenile court hearing. We are not here dealing with an "adversary system of criminal justice" as referred to in *Miranda.* We are dealing with a non-criminal proceeding where an effort should be made to have the juvenile talk fully. As was stated by one juvenile judge:[18]

> "The first purpose of a hearing is to learn the truth. Which is the greater justice to the child: to teach him honesty and encourage him to reveal the truth or to pave the way for him to lie and conceal the truth? Doctors diagnose and treat the child whose body is sick. The child is never encouraged to deceive the doctor or to evade his questions. Must there be a different ethic when a child's behavior is sick? We lawyers are taught to look upon the protections of the Bill of Rights as a basic ingredient of justice as commonly conceived. Of course we all applaud justice as a noble concept. But in criminal court stark justice, for all its virtues, is an arid, cold concept. There naked justice is hard, barren, uninviting

[18] *Alexander, Constitutional Rights In Juvenile Court,* 46 A.B.A.J. 1206, at 1209 (1960).

to many. Such justice can be cruel. It appeals mainly to the vindictive. That is because it is punitive. We administer it by punishing the guilty. To punish means to hurt; to inflict pain. The word pain, punch, penalty, come from the same root as punishment. Frankly, justice is unattractive to many clients of juvenile courts. Parents seldom want justice for their children. It may be all right for other people's children, but not for their own; nor for themselves. If all we want is simply justice it could just as well be meted out to children in any conventional court. The juvenile court was not created to administer justice to children. It was meant to go very much further than that. Its efforts were meant to safeguard those supra-constitutional rights mentioned above."

It is even stated in *Procedure and Evidence In The Juvenile Court*, Advisory Council of Judges of the National Council on Crime and Delinquency (1962) at p. 28:

"However, there is a powerful argument against transplanting the privilege to juvenile proceedings — that it interferes with a therapeutic approach. To establish rapport with the child, it is of course essential that the judge encourage him to talk freely. The court can often create an atmosphere that induces him to talk even if he is initially reluctant. The U.S. Children's Bureau does not recommend that the judge inform the child he need not testify, but merely states that the child should not be required to testify 'over the objection of his parents, guardian or counsel.' "[19]

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[19] See also *Paulsen, Fairness to the Juvenile Offender*, 41 Minn. L.Rev. 547, 561 (1957):

"A rule which requires alleged delinquents to be told that they need not testify at the hearing would be most unfortunate. The hearing ought to be

Procedural due process is not violated when the infant is not warned of a right against self-incrimination. The Arizona Supreme Court is correct in this regard.

E. Right to Appellate Review and to A Transcript of the Proceedings.

The Arizona Supreme Court held that there is no right of appeal from a juvenile court order. The court based its decision on a view previously propounded by the Arizona Court of Appeals in *Ginn v. Superior Court, in and for the County of Pima,* No. 1CA-CR 23, 404 P.2d 721 (1965) wherein that latter court held that (1) an appeal is a matter of privilege granted either by the Constitution or by statute, and the right to appeal does not exist unless expressly and affirmatively granted. (2) The Arizona Juvenile Code does not specifically provide for an appeal. (3) The general statutes relating to appeal have no application. (4) Juvenile Court Orders are reviewable by certiorari.

The case law on this subject is to the effect that a right to review is not essential to due process of law, but is a matter of grace only. [20]

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a part of the treatment process, a function which it certainly cannot perform if the child is told that he need not talk to the judge or to anyone else about the situation in which he finds himself."

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[20] See *Luckenbach S.S. Company, Inc. v. U.S.*, 272 U.S. 533, 47 S.Ct. 186, 71 L.Ed. 394 (1926); *State of Ohio ex rel Bryant v. Akron Metropolitan Park Dist. et al.*, 281 U.S. 74, 50 S.Ct. 228, 74 L.Ed. 710 (1920); 66 A.L.R. 1460; *Depauw University v. Brunk*, D.C., 53 F.2d 647 (1931) *aff'd* 285 U.S. 527, 52 S.Ct. 405, 76 L.Ed. 924; *In re Foote*, 129 Misc. 2, 221 N.Y.S. 302 (1927); *City of Portland v. Miami Corp.*, 132 Ore. 660, 285 Pac. 815 (1930); *Beacon Lumber Co. v. Brown*, 14 S.W.2d 1022 (1929); *Rudacille v. State, Comm. on Conservation & Development, etc.*, 155 Va. 808, 156 S.E. 829 (1931); *Ex parte Packer*, 136 Ore. 159, 296 Pac. 234 (1931).

This Court stated in the case of *McKane v. Durston*, 153 U.S. at 687:

> "A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is committed, was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the state to allow or not to allow such a review. A citation of authorities upon the point is unnecessary. It is, therefore, clear that the right of appeal may be accorded by the state to the accused upon such terms as in its wisdom may be deemed proper."

This principle was affirmed in *Griffin v. Illinois*, 351 U.S. 12, 100 L.Ed. 91, 76 S.Ct. 585, 55 A.L.R.2d 1055 and again in *Draper v. Washington*, 372 U.S. 487, 9 L. Ed.2d 899, 83 S.Ct. 774.

Since a decision of a juvenile court in the State of Arizona is reviewable, appellee fails to see how appellants can maintain that a juvenile proceeding in Arizona is not subject to correction in the case of a possible abuse of judicial discretion.

As to the requirement of a record, since there is no right to appeal, and since the evidence adduced at a juvenile hearing is of a confidential nature, the opinion of the Arizona Supreme Court is correct in holding there is no requirement that a transcript be made but that the juvenile court has the discretion to order or deny the taking of a transcript. In a case such as this appellee knows of no law requiring a holding to the contrary.

The Arizona law as interpreted in the decision below did not deprive appellants of due process of law in regard to the matters of appeal and a transcript.

CONCLUSION

The judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 116.—October Term, 1966.

In the Matter of the Application of Paul L. Gault and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor, Appellants.	On Appeal From the Supreme Court of Arizona.

[May 15, 1967.]

Mr. Justice Fortas delivered the opinion of the Court.

This is an appeal under 28 U. S. C. § 1257 (2) from a judgment of the Supreme Court of Arizona affirming the dismissal of a petition for a writ of habeas corpus. 99 Ariz. 181, 407 P. 2d 760 (1965). The petition sought the release of Gerald Francis Gault, petitioners' 15-year-old son, who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court of Gila County, Arizona. The Supreme Court of Arizona affirmed dismissal of the writ against various arguments which included an attack upon the constitutionality of the Arizona Juvenile Code because of its alleged denial of procedural due process rights to juveniles charged with being "delinquents." The court agreed that the constitutional guarantee of due process of law is applicable in such proceedings. It held that Arizona's Juvenile Code is to be read as "impliedly" implementing the "due process concept." It then proceeded to identify and describe "the particular elements which constitute due process in a juvenile hearing." It concluded that the proceedings ending in commitment of Gerald Gault did not offend those requirements. We do not agree, and we reverse. We begin with a statement of the facts.

I.

On Monday, June 8, 1964, at about 10 a. m., Gerald Francis Gault and a friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. Gerald was then

still subject to a six months' probation order which had been entered on February 25, 1964, as a result of his having been in the company of another boy who had stolen a wallet from a lady's purse. The police action on June 8 was taken as the result of a verbal complaint by a neighbor of the boys, Mrs. Cook, about a telephone call made to her in which the caller or callers made lewd or indecent remarks. It will suffice for purposes of this opinion to say that the remarks or questions put to her were of the irritatingly offensive, adolescent, sex variety.

At the time Gerald was picked up, his mother and father were both at work. No notice that Gerald was being taken into custody was left at the home. No other steps were taken to advise them that their son had, in effect, been arrested. Gerald was taken to the Children's Detention Home. When his mother arrived home at about 6 o'clock, Gerald was not there. Gerald's older brother was sent to look for him at the trailer home of the Lewis family. He apparently learned then that Gerald was in custody. He so informed his mother. The two of them went to the Detention Home. The deputy probation officer, Flagg, who was also superintendent of the Detention Home, told Mrs. Gault "why Jerry was there" and said that a hearing would be held in Juvenile Court at 3 o'clock the following day, June 9.

Officer Flagg filed a petition with the Court on the hearing day, June 9, 1964. It was not served on the Gaults. Indeed, none of them saw this petition until the habeas corpus hearing on August 17, 1964. The petition was entirely formal. It made no reference to any factual basis for the judicial action which it initiated. It recited only that "said minor is under the age of 18 years and in need of the protection of this Honorable Court [and that] said minor is a delinquent minor." It prayed for a hearing and an order regarding

"the care and custody of said minor." Officer Flagg executed a formal affidavit in support of the petition.

On June 9, Gerald, his mother, his older brother, and Probation Officers Flagg and Henderson appeared before the Juvenile Judge in chambers. Gerald's father was not there. He was at work out of the city. Mrs. Cook, the complainant, was not there. No one was sworn at this hearing. No transcript or recording was made. No memorandum or record of the substance of the proceedings was prepared. Our information about the proceedings and the subsequent hearing on June 15, derives entirely from the testimony of the Juvenile Court Judge,[1] Mr. and Mrs. Gault and Officer Flagg at the habeas corpus proceeding conducted two months later. From this, it appears that at the July 9 hearing Gerald was questioned by the judge about the telephone call. There was conflict as to what he said. His mother recalled that Gerald said he only dialed Mrs. Cook's number and handed the telephone to his friend, Ronald. Officer Flagg recalled that Gerald had admitted making the lewd remarks. Judge McGhee testified that Gerald "admitted making one of these [lewd] statements." At the conclusion of the hearing, the judge said he would "think about it." Gerald was taken back to the Detention Home. He was not sent to his own home with his parents. On June 11 or 12, after having been detained since June 8, Gerald was released and driven home.[2] There is no

[1] Under Arizona law, juvenile hearings are conducted by a judge of the Superior Court, designated by his colleagues on the Superior Court to serve as Juvenile Court Judge. Arizona Const., Art. 6, § 15; Arizona Revised Statutes (hereinafter ARS) §§ 8–201, 8–202.

[2] There is a conflict between the recollection of Mrs. Gault and that of Officer Flagg. Mrs. Gault testified that Gerald was released on Friday, June 12; Officer Flagg that it had been on Thursday, June 11. This was from memory; he had no record, and the note was undated.

explanation in the record as to why he was kept in the Detention Home or why he was released. At 5 p. m. on the day of Gerald's release, Mrs. Gault received a note signed by Officer Flagg. It was on plain paper, not letterhead. Its entire text was as follows:

> "Mrs. Gault:
>
> "Judge McGHEE has set Monday June 15, 1964 at 11:00 A. M. as the date and time for further Hearings on Gerald's delinquency
>
> /s/Flagg"

At the appointed time on Monday, June 15, Gerald, his father and mother, Ronald Lewis and his father, and Officers Flagg and Henderson were present before Judge McGhee. Witnesses at the habeas corpus proceeding differed in their recollections of Gerald's testimony at the June 15 hearing. Mr. and Mrs. Gault recalled that Gerald again testified that he had only dialed the number and that the other boy had made the remarks. Officer Flagg agreed that at this hearing Gerald did not admit making the lewd remarks.[3] But Judge McGhee recalled that "there was some admission again of some of the lewd statements. He—he didn't admit any of the more serious lewd statements."[4] Again, the complainant, Mrs. Cook, was not present. Mrs. Gault asked that Mrs. Cook be present "so she could see which boy had done the talking, the dirty talking over the phone." The Juvenile Judge said "she didn't have to be present at that hearing." The judge did not speak to Mrs.

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[3] Officer Flagg also testified that Gerald had not, when questioned at the Detention Home, admitted having made any of the lewd statements, but that each boy had sought to put the blame on the other. There was conflicting testimony as to whether Ronald had accused Gerald of making the lewd statements during the June 15 hearing.

[4] Judge McGhee also testified that Gerald had not denied "certain statements" made to him at the hearing by Officer Henderson.

Cook or communicate with her at any time. Probation Officer Flagg had talked to her once—over the telephone on June 9.

At this June 15 hearing a "referral report" made by the probation officers was filed with the court, although not disclosed to Gerald or his parents. This listed the charge as "Lewd Phone Calls." At the conclusion of the hearing, the judge committed Gerald as a juvenile delinquent to the State Industrial School "for the period of his minority [that is, until 21], unless sooner discharged by due process of law." An order to that effect was entered. It recites that "after a full hearing and due deliberation the Court finds that said minor is a delinquent child, and that said minor is of the age of 15 years."

No appeal is permitted by Arizona law in juvenile cases. On August 3, 1964, a petition for a writ of habeas corpus was filed with the Supreme Court of Arizona and referred by it to the Superior Court for hearing.

At the habeas corpus hearing on August 17, Judge McGhee was vigorously cross-examined as to the basis for his actions. He testified that he had taken into account the fact that Gerald was on probation. He was asked "under what section of . . . the code you found the boy delinquent?"

His answer is set forth in the margin.[5] In substance, he concluded that Gerald came within ARS § 8-201-6 (a),

[5] "Q. All right. Now, Judge, would you tell me under what section of the law or tell me under what section of—of the code you found the boy delinquent?

"A. Well, there is a—I think it amounts to disturbing the peace. I can't give you the section, but I can tell you the law, that when one person uses lewd language in the presence of another person, that it can amount to—and I consider that when a person makes it over the phone, that it is considered in the presence, I might be wrong, that is one section. The other section upon which I consider the boy delinquent is Section 8-201, Subsection (d), habitually involved in immoral matters."

which specifies that a "delinquent child" includes one "who has violated a law of the state or an ordinance or regulation of a political subdivision thereof." The law which Gerald was found to have violated is ARS § 13–377. This section of the Arizona Criminal Code provides that a person who "in the presence of or hearing of any woman or child . . . uses vulgar, abusive or obscene language, is guilty of a misdemeanor. . . ." The penalty specified in the Criminal Code, which would apply to an adult, is $5 to $50, or imprisonment for not more than two months. The judge also testified that he acted under ARS § 8–201–6 (d) which includes in the definition of a "delinquent child" one who, as the judge phrased it, is "habitually involved in immoral matters."[4]

Asked about the basis for his conclusion that Gerald was "habitually involved in immoral matters," the judge testified, somewhat vaguely, that two years earlier, on July 2, 1962, a "referral" was made concerning Gerald, "where the boy had stolen a baseball glove from another boy and lied to the Police Department about it." The judge said there was "no hearing," and "no accusation" relating to this incident, "because of lack of material foundation." But it seems to have remained in his mind as a relevant factor. The judge also testified that Gerald had admitted making other nuisance phone calls in the

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[4] ARS § 8–201–6, the section of the Arizona Juvenile Code which defines a delinquent child, reads:

"'Delinquent child' includes:

"(a) A child who has violated a law of the state or an ordinance or regulation of a political subdivision thereof.

"(b) A child who, by reason of being incorrigible, wayward or habitually disobedient, is uncontrolled by his parent, guardian or custodian.

"(c) A child who is habitually truant from school or home.

"(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others."

past which, as the judge recalled the boy's testimony, were "silly calls, or funny calls, or something like that."

The Superior Court dismissed the writ, and appellants sought review in the Arizona Supreme Court. That court stated that it considered appellants' assignments of error as urging (1) that the Juvenile Code, ARS § 8–201 to § 8–239, is unconstitutional because it does not require that parents and children be apprised of the specific charges, does not require proper notice of a hearing, and does not provide for an appeal; and (2) that the proceedings and order relating to Gerald constituted a denial of due process of law because of the absence of adequate notice of the charge and the hearing; failure to notify appellants of certain constitutional rights including the rights to counsel and to confrontation, and the privilege against self-incrimination; the use of unsworn hearsay testimony; and the failure to make a record of the proceedings. Appellants further asserted that it was error for the Juvenile Court to remove Gerald from the custody of his parents without a showing and finding of their unsuitability, and alleged a miscellany of other errors under state law.

The Supreme Court handed down an elaborate and wide-ranging opinion affirming dismissal of the writ and stating the court's conclusions as to the issues raised by appellants and other aspects of the juvenile process. In their jurisdictional statement and brief in this Court, appellants do not urge upon us all of the points passed upon by the Supreme Court of Arizona. They urge that we hold the Juvenile Code of Arizona invalid on its face or as applied in this case because, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which the Juvenile Court has virtually un-

limited discretion, and in which the following basic rights are denied:

1. Notice of the charges;
2. Right to counsel;
3. Right to confrontation and cross-examination;
4. Privilege against self-incrimination;
5. Right to a transcript of the proceedings; and
6. Right to appellate review.

We shall not consider other issues which were passed upon by the Supreme Court of Arizona. We emphasize that we indicate no opinion as to whether the decision of that court with respect to such other issues does or does not conflict with requirements of the Federal Constitution.[7]

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[7] For example, the laws of Arizona allow arrest for a misdemeanor only if a warrant is obtained or if it is committed in the presence of the officer. ARS § 13–1403. The Supreme Court of Arizona held that this is inapplicable in the case of juveniles. See ARS § 8–221 which relates specifically to juveniles. But compare *Two Brothers and a Case of Liquor*, Juv. Ct. D. C., Nos 66–2652–J, 66–2653–J, December 28, 1966 (opinion of Judge Ketcham); Standards for Juvenile and Family Courts, Children's Bureau Pub. No. 437–1966 (1966), p. 47 (hereinafter cited as Standards); New York Family Court Act § 721 (McKinney's, Vol. 29A, 1963) (hereinafter cited as N. Y. Family Court Act).

The Court also held that the judge may consider hearsay if it is "of a kind on which reasonable men are accustomed to rely in serious affairs." But compare Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice, 79 Harv. L. Rev. 775, 795 (1966) (hereinafter cited as Harvard Law Review Note):

"The informality of juvenile court hearings frequently leads to the admission of hearsay and unsworn testimony. It is said that 'close adherence to the strict rules of evidence might prevent the court from obtaining important facts as to the child's character and condition which could only be to the child's detriment.' The assumption is that the judge will give normally inadmissible evidence only its proper weight. It is also declared in support of these evidentiary practices that the juvenile court is not a criminal

II.

The Supreme Court of Arizona held that due process of law is requisite to the constitutional validity of proceedings in which a court reaches the conclusion that a juvenile has been at fault, has engaged in conduct prohibited by law, or has otherwise misbehaved with the consequence that he is committed to an institution in which his freedom is curtailed. This conclusion is in accord with the decisions of a number of courts under both federal and state constitutions.[8]

This Court has not heretofore decided the precise question. In *Kent* v. *United States*, 383 U. S. 541 (1966), we considered the requirements for a valid waiver of the "exclusive" jurisdiction of the Juvenile Court of the

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court, that the importance of the hearsay rule has been overestimated, and that allowing an attorney to make 'technical objections' would disrupt the desired informality of the proceedings. But to the extent that the rules of evidence are not merely technical or historical, but like the hearsay rule have a sound basis in human experience, they should not be rejected in any judicial inquiry. Juvenile court judges in Los Angeles, Tucson, and Wisconsin Rapids, Wisconsin report that they are satisfied with the operation of their courts despite application of unrelaxed rules of evidence." (Footnotes omitted.)

It ruled that the correct burden of proof is that "the juvenile judge must be persuaded by clear and convincing evidence that the infant has committed the alleged delinquent act." Compare the less stringent "preponderance of the evidence" test, N. Y. Family Court Act § 744 (where maximum commitment is three years, §§ 753, 758). Cf. Harvard Law Review Note, p. 795.

[8] See, *e. g.*, *In the Matters of Gregory W. and Gerald S.*, 19 N. Y. 2d 55; — N. E. 2d — (1966); *In the Interests of Carlo and Stasilowicz*, 48 N. J. 224, 225 A. 2d 110 (1966); *People* v. *Dotson*, 46 Cal. 2d 891, 299 P. 2d 875 (1956); *Pee* v. *United States*, — U. S. App. D. C. —, 274 F. 2d 556 (1959); *Wissenburg* v. *Bradley*, 209 Iowa 813, 229 N. W. 205 (1930); *Bryant* v. *Brown*, 151 Miss. 398, 118 So. 184 (1928); *Dendy* v. *Wilson*, 142 Tex. 460, 179 S. W. 2d 269 (1944); Application of Johnson, 178 F. Supp. 155 (D. C. D. N. J. 1957).

District of Columbia so that a juvenile could be tried in the adult criminal court of the District. Although our decision turned upon the language of the statute, we emphasized the necessity that "the basic requirements of due process and fairness" be satisfied in such proceedings.[9] *Haley* v. *Ohio*, 332 U. S. 596 (1948), involved the admissibility, in a state criminal court of general jurisdiction, of a confession by a 15-year-old boy. The Court held that the Fourteenth Amendment applied to prohibit the use of the coerced confession. MR. JUSTICE DOUGLAS said, "Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law."[10] To the same effect is *Gallegos* v. *Colorado*, 370 U. S. 49 (1962). Accordingly, while these cases relate only to restricted aspects of the subject, they unmistakably indicate that, whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.

We do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile "delinquents." For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process. See note 48, *infra*. We consider only the problems presented to us by this case. These relate to the proceedings by which a determination is made as to whether a juvenile is a "delinquent" as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution. As to these proceedings, there appears to be little cur-

[9] 383 U. S., at 553.

[10] 332 U. S., at 601 (opinion for four Justices).

rent dissent from the proposition that the Due Process Clause has a role to play.[11] The problem is to ascertain the precise impact of the due process requirement upon such proceedings.

From the inception of the juvenile court system, wide differences have been tolerated—indeed insisted upon—between the procedural rights accorded to adults and those of juveniles. In practically all jurisdictions, there are rights granted to adults which are withheld from juveniles. In addition to the specific problems involved in the present case, for example, it has been held that the juvenile is not entitled to bail, to indictment by grand jury, to a public trial or to trial by jury.[12] It is frequent practice that rules governing the arrest and interrogation of adults by the police are not observed in the case of juveniles.[13]

The history and theory underlying this development are well-known, but a recapitulation is necessary for purposes of this opinion. The juvenile court movement began in this country at the end of the last century. From the juvenile court statute adopted in Illinois in 1899, the system has spread to every State in the Union,

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[11] See Report of the President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society" (1967) (hereinafter cited as Nat'l Crime Comm'n Report), pp. 81, 85–86; Standards, p. 71; Gardner, The Kent Case and the Juvenile Court: A Challenge to Lawyers, 52 A. B. A. J. 923 (1966); Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957); Ketcham, The Legal Renaissance in the Juvenile Court, 60 Nw. U. L. Rev. 585 (1965); Allen, The Borderland of Criminal Justice (1964), pp. 19–23; Harvard Law Review Note, p. 791; Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col. L. Rev. 281 (1967); Comment, Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal, 114 U. Pa. L. Rev. 1171 (1966).

[12] See *Kent* v. *United States*, 383 U. S. 541, 555 and n. 22 (1966).

[13] See note 7, *supra*.

the District of Columbia, and Puerto Rico.[14] The constitutionality of juvenile court laws has been sustained in over 40 jurisdictions against a variety of attacks.[15]

The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."[16] The child—essentially good, as

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[14] See National Council of Juvenile Court Judges, Directory and Manual (1964), p. 1. The number of juvenile judges as of 1964 is listed as 2,987, of which 213 are full-time juvenile court judges. *Id.*, at 305. The Nat'l Crime Comm'n Report indicates that half of these judges have no undergraduate degree, a fifth have no college education at all, a fifth are not members of the bar, and three-quarters devote less than one-quarter of their time to juvenile matters. See also McCune, Profile of the Nation's Juvenile Court Judges (monograph, George Washington University, Center for the Behavioral Sciences, 1965), which is a detailed statistical study of juvenile court judges, and indicates additionally that about a quarter of these judges have no law school training at all. About one-third of all judges have no probation and social work staff available to them; between eighty and ninety percent have no available psychologist or psychiatrist. *Ibid.* It has been observed that while "good will, compassion and similar virtues are . . . admirably prevalent throughout the system . . . expertise, the keystone of the whole venture, is lacking." Harvard Law Review Note, p. 809. In 1965, over 697,000 delinquency cases (excluding traffic) were disposed of in these courts, involving some 601,000 children, or 2% of all children between 10 and 17. Juvenile Court Statistics—1961, Children's Bureau Statistical Series No. 85 (1966), p. 2.

[15] See Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup. Ct. Review 167, 174.

[16] Julian Mack, The Juvenile Court, 23 Harv. L. Rev. 104, 119–120 (1909).

they saw it—was to be made "to feel that he is the object of [the State's] care and solicitude," [17] not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the State was proceeding as *parens patriae*.[18] The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the State to act *in loco parentis* for the purpose of protecting the property interests and the person of the child.[19] But there is no trace of the

[17] *Id.*, at 120.

[18] *Id.*, at 109; Paulsen, *op. cit. supra*, note 15, at 173–174. There seems to have been little early constitutional objection to the special procedures of juvenile courts. But see Waite, How Far Can Court Procedure Be Socialized Without Impairing Individual Rights, 13 J. Am. Inst. of Crim. L. & Crim. 339, 340 (1922): "The Court which must direct its procedure even apparently to do something *to* a child because of what he *has done*, is parted from the court which is avowedly concerned only with doing something *for* a child because of what he *is* and *needs*, by a gulf too wide to be bridged by any humanity which the judge may introduce into his hearings, or by the habitual use of corrective rather than punitive methods after conviction."

[19] Paulsen, *op. cit. supra*, note 15, at 173; Hurley, Origin of the Illinois Juvenile Court Law, in The Child, The Clinic, and the Court (1925), pp. 321, 328.

doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders.[20] In these old days, the State was not deemed to have authority to accord them fewer procedural rights than adults.

The right of the State, as *parens patriae*, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right "not to liberty but to custody." He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions—that is, if the child is "delinquent"—the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled.[21] On this basis, proceedings involving juveniles were described as "civil" not "criminal" and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.[22]

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[20] Julian Mack, The Chancery Procedure in the Juvenile Court, in The Child, The Clinic, and the Court (1925), p. 310.

[21] See, *e. g.*, Shears, Legal Problems Peculiar to Children's Courts, 48 A. B. A. J. 719, 720 (1962) ("The basic right of a juvenile is not to liberty but to custody. He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so."); *Ex parte Crouse*, 4 Whart. 9, 11 (Sup. Ct. Pa. 1839); *Petition of Ferrier*, 103 Ill. 367, 371–373 (1882).

[22] The Appendix to the opinion of Judge Prettyman in *Pee* v. *United States*, — U. S. App. D. C. —, 274 F. 2d 556 (1959) lists authority in 51 jurisdictions to this effect. Even rules required by due process in civil proceedings, however, have not generally been deemed compulsory as to proceedings affecting juveniles. For example, constitutional requirements as to notice of issues, which would commonly apply in civil cases, are commonly disregarded in juvenile proceedings, as this case illustrates.

Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is—to say the least—debatable. And in practice, as we remarked in the *Kent* case, *supra*, the results have not been entirely satisfactory.[23] Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure. In 1937, Dean Pound wrote: "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts. . . ."[24]

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[23] "There is evidence . . . that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." 383 U. S., at 556, citing Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1965 Wis. L. Rev. 7; Harvard Law Review Note; and various congressional materials set forth at 383 U. S., at 546, n. 5.

On the other hand, while this opinion and much recent writing concentrate upon the failures of the juvenile court system to live up to the expectations of its founders, the observation of the Nat'l Crime Comm'n Report should be kept in mind:

"Although its shortcomings are many and its results too often disappointing, the juvenile justice system in many cities is operated by people who are better educated and more highly skilled, can call on more and better facilities and services, and has more ancillary agencies to which to refer its clientele than its adult counterpart." *Id.*, at 78.

[24] Foreword to Young, Social Treatment, in Probation and Delinquency (1937), p. xxvii. The 1965 Report of the United States Commission on Civil Rights, "Law Enforcement—A Report on Equal Protection in the South," pp. 80–83, documents numerous instances in which "local authorities used the broad discretion afforded them by the absence of standards [in the juvenile process]" to punish, intimidate, and obstruct youthful participants in civil rights demonstrations. See also Paulsen, Juvenile Courts, Family Courts, and the Poor Man, 54 Calif. L. Rev. 694, 707–709 (1966).

The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness. The Chairman of the Pennsylvania Council of Juvenile Court Judges has recently observed: "Unfortunately, loose procedures, high-handed methods and crowded court calendars, either singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process." [25]

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[25] Lehman, A Juvenile's Right to Counsel in a Delinquency Hearing, 17 Juvenile Court Judges Journal 53, 54 (1966).

Compare the observation of the late Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, in a foreword to Virtue, Basic Structure for Children's Services in Michigan (1953), p. x:

"In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel."

We are warned that the system must not "degenerate into a star chamber proceeding with the judge imposing his own particular brand of culture and morals on indigent people. . . ." Judge Marion G. Woodword, letter reproduced in 18 Social Service Review 365, 368 (1944). Doctor Rovet, the Swiss psychiatrist, in his monograph for the World Health Organization, Psychiatric Aspects of Juvenile Delinquency (1951), p. 79, stated that: "One of the most definite conclusions of this investigation is that few fields exist in which more serious coercive measures are applied, on such flimsy objective evidence, than in that of juvenile delinquency." We are told that "The judge as amateur psychologist, experimenting upon

Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the State may exercise.[26] As Mr. Justice

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the unfortunate children who must appear before him, is neither an attractive nor convincing figure." Harvard Law Review Note, p. 809.

[26] The impact of denying fundamental procedural due process to juveniles involved in "delinquency" charges is dramatized by the following considerations: (1) In 1965, persons under 18 accounted for about one-fifth of all arrests for serious crimes (Nat'l Crime Comm'n Report p. 55) and over half of all arrests for serious property offenses (*id.*, at 56), and in the same year some 601,000 children under 18, or 2% of the total population of that age, came before juvenile courts (Juvenile Court Statistics—1965, Children's Bureau Statistical Series, No. 85, p. 2 (1966)). About one out of nine youths will be referred to juvenile court in connection with a delinquent act (excluding traffic offenses) before he is 18 (Nat'l Crime Comm'n Report, p. 55). Cf. also Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1965), p. 2; Report of the President's Commission on Crime in the District of Columbia (1966) (hereinafter cited as D. C. Crime Comm'n Report), p. 773. Furthermore, most juvenile crime apparently goes undetected or not formally punished. Wheeler and Cottrell, *supra*, observe that "Almost all youngsters have committed at least one of the petty forms of theft and vandalism in the course of their adolescence." *Id.*, at 28–29. See also Nat'l Crime Comm'n Report, at p. 55, where it is stated that "self-report studies reveal that perhaps 90 percent of all young people have committed at least one act for which they could have been brought to juvenile court." It seems that the rate of juvenile delinquency is also steadily rising. See Nat'l Crime Comm'n Report, p. 56; Juvenile Court Statistics, *supra*, pp. 2–3. (2) In New York, where most juveniles are represented by counsel (see note 69, *infra*) and substantial procedural rights are afforded (see, *e. g.*, notes 80, 81, 99, *infra*), out of a fiscal year 1965–1966 total of 10,755 juvenile proceedings involving boys, 2,242 were dis-

Frankfurter has said: "The history of American freedom is, in no small measure, the history of procedure." [27] But in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. "Procedure is to law what 'scientific method' is to science." [28]

It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process. As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile

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missed for failure of proof at the fact-finding hearing; for girls, the figures were 306 out of total of 1,051, New York Judicial Conference, Twelfth Annual Report, pp. 314, 316 (1967). (3) In about one-half of the States, a juvenile may be transferred to an adult penal institution after a juvenile court has found him "delinquent" (Delinquent Children in Penal Institutions, Children's Bureau Pub. No. 415 (1964), p. 1). (4) In some jurisdictions a juvenile may be subjected to criminal prosecution for the same offense for which he has served under a juvenile court commitment. However, the Texas procedure to this effect has recently been held unconstitutional by a federal district court judge, in a habeas corpus action. *Sawyer* v. *Hunck*, 245 F. Supp. 55 (D. C. W. D. Tex. 1965). (5) In most of the States the juvenile may end in criminal court through waiver (Harvard Law Review Note, p. 793).

[27] *Malinski* v. *New York*, 324 U. S. 401, 414 (1945) (concurring opinion).

[28] Foster, Social Work, the Law, and Social Action, in Social Casework, July 1964, p. 286.

process.[29] But it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. Neither sentiment nor folklore should cause us to shut our eyes, for example, to such startling findings as that reported in an exceptionally reliable study of repeaters or recidivism conducted by the Stanford Research Institute for the President's Commission on Crime in the District of Columbia. This Commission's Report states:

> "In fiscal 1966 approximately 66 percent of the 16- and 17-year-old juveniles referred to the court by the Youth Aid Division had been before the court previously. In 1965, 56 percent of those in the Receiving Home were repeaters. The SRI study revealed that 61 percent of the sample Juvenile Court referrals in 1965 had been previously referred at least once and that 42 percent had been referred at least twice before." *Id.*, at 773.

Certainly, these figures and the high crime rates among juveniles to which we have referred (*supra*, note 26), could not lead us to conclude that the absence of constitutional protections reduces crime, or that the juvenile system, functioning free of constitutional inhibitions as it has largely done, is effective to reduce crime or rehabilitate offenders. We do not mean by this to denigrate the juvenile court process or to suggest that there are not aspects of the juvenile system relating to offenders which are valuable. But the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication. For example, the commendable principles relating to the processing and treatment of juveniles separately from adults are in no way involved or affected by the

[29] See Note, Rights and Rehabilitation in Juvenile Courts, 67 Col. L. Rev. 281, 321, and *passim* (1967).

procedural issues under discussion.[30] Further, we are told that one of the important benefits of the special juvenile court procedures is that they avoid classifying the juvenile as a "criminal." The juvenile offender is

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[30] Here again, however, there is substantial question as to whether fact and pretension, with respect to the separate handling and treatment of children, coincide. See generally, *infra*.

While we are concerned only with procedure before the juvenile court in this case, it should be noted that to the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a *quid pro quo*. As to the problem and importance of special care at the adjudicatory stage, cf. notes 14 and 26, *supra*. As to treatment, see Nat'l Crime Comm'n Report, pp. 80, 87; D. C. Crime Comm'n Report, pp. 665–676, 686–687 (at p. 687 the Report refers to the District's "bankruptcy of dispositional resources"), 692–695, 700–718 (at p. 701 the Report observes that "The Department of Public Welfare lacks even the rudiments of essential diagnostic and clinical services"); Wheeler & Cottrell, Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1965), pp. 32–35; Harvard Law Rev. Note, p. 809; Paulsen, Juvenile Courts, Family Courts, and the Poor Man, 54 Calif. L. Rev. 694, 709–712 (1966); Polier, A View From the Bench (1964). Cf. also, In the Matter of the Youth House, Inc., Report of the July 1966 "A" Term of the Bronx County Grand Jury, Supreme Court of New York, County of Bronx, Trial Term, Part XII, March 21, 1967 (cf. New York Times, March 23, 1967, p. 1, col. 8.). The high rate of juvenile recidivism casts some doubt upon the adequacy of treatment afforded juveniles. See D. C. Crime Comm'n Report, p. 773; Nat'l Crime Comm'n Report, pp. 55, 78.

In fact, some courts have recently indicated that since treatment is the essential *quid pro quo*, a juvenile may challenge the validity of his custody on the ground that he is not in fact receiving any special treatment. See *Creek* v. *Stone*, — U. S. App. D. C. —, — F. 2d — (1967); *Kautter* v. *Reid*, 183 F. Supp. 352 (D. C. D. C. 1960); *White* v. *Reid*, 125 F. Supp. 647 (D. C. D. C. 1954). See also *Elmore* v. *Stone*, — U. S. App. D. C. —, 355 F. 2d 841 (1966) (separate statement of Baselon, C. J.); *Clayton* v. *Stone*, — U. S. App. D. C. —, — F. 2d — (1966) (separate statement of Baselon, C. J.). Cf. Wheeler & Cottrell, *supra*, at pp. 32, 35; *In re Rich*, 125 Vt. 373, — A. 2d — (1966). Cf. also *Rouse* v. *Cameron*, — U. S. App. D. C. —, 373 F. 2d 451 (1966).

now classed as a "delinquent." There is, of course, no reason why this should not continue. It is disconcerting, however, that this term has come to involve only slightly less stigma than the term "criminal" applied to adults.[31] It is also emphasized that in practically all jurisdictions, statutes provide that an adjudication of the child as a delinquent shall not operate as a civil disability or disqualify him for civil service appointment.[32] There is no reason why the application of due process requirements should interfere with such provisions.

Beyond this, it is frequently said that juveniles are protected by the process from disclosure of their deviational behavior. As the Supreme Court of Arizona phrased it in the present case, the summary procedures of juvenile courts are sometimes defended by a statement that it is the law's policy "to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past." This claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records, and even as to those the evidence is that many courts routinely furnish information to the FBI and the military, and on request to government agencies and even to private employers.[33] Of more importance are police records. In most States

[31] ". . . the word 'delinquent' has today developed such invidious connotations that the terminology is in the process of being altered; the new descriptive phrase is 'persons in need of supervision,' usually shortened to 'pins.'" Harvard Law Review Note, p. 799, n. 140. The N. Y. Family Court Act § 712 distinguishes between "delinquents" and "persons in need of supervision."

[32] See, *e. g.*, the Arizona provision, ARS § 8-228.

[33] Harvard Law Review Note, pp. 784–785, 800. Cf. Nat'l Crime Comm'n Report, pp. 87–88; Ketcham, The Unfulfilled Promise of the Juvenile Court (Nat'l Council on Crime and Delinquency, 1961), pp. 102–103.

the police keep a complete file of juvenile "police contacts" and have complete discretion as to disclosure of juvenile records. Police departments receive requests for information from the FBI and other law-enforcement agencies, the Armed Forces, and social service agencies, and most of them generally comply.[34] Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies.[35]

In any event, there is no reason why, consistently with due process, a State cannot continue, if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles. It is interesting to note, however, that the Arizona Supreme Court used the confidentiality argument as a justification for the type of notice which is here attacked as inadequate for due process purposes. The parents were given merely general notice that their child was charged with "delinquency." No facts were specified. The Arizona court held, however, as we shall discuss, that in addition to this general "notice," the child and his parents must be advised "of the facts involved in the case" no later than the initial hearing by the judge. Obviously, this does not "bury" the word about the child's transgressions. It merely defers the time of disclosure to a point when it is of limited use to the child or his parents in preparing his defense or explanation.

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[34] *Id.*, at 785–787.

[35] *Id.*, at 785, 800. See also, with respect to the problem of confidentiality of records, Note, Rights and Rehabilitation in the Juvenile Courts, 67 Col. L. Rev. 281, 286–289 (1967). Even the privacy of the juvenile hearing itself is not always adequately protected. *Id.*, at 285–286.

Further, it is urged that the juvenile benefits from informal proceedings in the court. The early conception of the juvenile court proceeding was one in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems, by paternal advice and admonition, and in which, in extreme situations, benevolent and wise institutions of the State provided guidance and help "to save him from a downward career." [36] Then, as now, goodwill and compassion were admirably prevalent. But recent studies have, with surprising unanimity, entered sharp dissent as to the validity of this gentle conception. They suggest that the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process may be a more impressive and more therapeutic attitude so far as the juvenile is concerned. For example, in a recent study, the sociologists Wheeler and Cottrell observe that when the procedural laxness of the *"parens patriae"* attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed. They conclude as follows: "Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel." [37] Of course, it is not suggested that juvenile court judges should fail appropriately to take account,

[36] Mack, The Juvenile Court, 23 Harv. L. Rev. 104, 120 (1909).

[37] Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), p. 33. The conclusion of the Nat'l Crime Comm'n Report is similar: "[T]here is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers." *Id.*, at 85. See also Allen, The Borderland of Criminal Justice (1964), p. 19.

in their demeanor and conduct, of the emotional and psychological attitude of the juveniles with whom they are confronted. While due process requirements will, in some instances, introduce a degree of order and regularity to juvenile court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite, nor do we here rule upon the question whether ordinary due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child.

Ultimately, however, we confront the reality of that portion of the juvenile court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with white-washed walls, regimented routine and institutional laws . . . ."[38] Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness[39] to rape and homicide.

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[38] *Holmes' Appeal*, 379 Pa. 599, 616, 109 A. 2d —, 530 (1954) (Musmanno, J., dissenting). See also *The State* (*Sheerin*) v. *Governor*, Supreme Court of Ireland, July 28, 1966; *Trimble* v. *Stone*, 187 F. Supp. 483, 485–485 (D. C. D. C. 1960); Allen, The Borderland of Criminal Justice (1964), pp. 18, 52–56.

[39] Cf. the Juvenile Code of Arizona, ARS § 8-201-6.

In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of juvenile court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it—was it a prank of adolescence or a brutal act threatening serious consequences to himself or society unless corrected?[40] Under traditional notions, one would assume that in a case like that of Gerald Gault, where the juvenile appears to have a home, a working mother and father, and an older brother, the Juvenile Judge would have made a careful inquiry and judgment as to the possibility that the boy could be disciplined and dealt with at home, despite his previous transgressions.[41] Indeed, so far as appears in the record before us, except for some conversation with Gerald about his school work and his "wanting to go to . . . Grand Canyon with his father," the points to which the judge directed his atten-

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[40] Cf., however, the conclusions of the D. C. Crime Comm'n Report, pp. 692–693, concerning the inadequacy of the "social study records" upon which the juvenile court judge must make this determination and decide on appropriate treatment.

[41] The Juvenile Judge's testimony at the habeas corpus proceeding is devoid of any meaningful discussion of this. He appears to have centered his attention upon whether Gerald made the phone call and used lewd words. He was impressed by the fact that Gerald was on six months' probation because he was with another boy who allegedly stole a purse—a different sort of offense, sharing the feature that Gerald was "along." And he even referred to a report which he said was not investigated because "there was no accusation" "because of lack of material foundation."

With respect to the possible duty of a trial court to explore alternatives to involuntary commitment in a civil proceeding, cf. *Lake* v. *Cameron*, — U. S. App. D. C. —, 364 F. 2d 657 (1966), which arose under statutes relating to treatment of the mentally ill.

tion were little different from those that would be involved in determining any charge of violation of a penal statute.[42] The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment were possible because Gerald was 15 years of age instead of over 18.

If Gerald had been over 18, he would not have been subject to Juvenile Court proceedings.[43] For the particular offense immediately involved, the maximum punishment would have been a fine of $5 to $50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona's laws and constitution. The United States Constitution would guarantee him rights and protections with respect to arrest, search and seizure, and pretrial interrogation. It would assure him of specific notice of the charges and adequate time to decide his course of action and to prepare his defense. He would be entitled to clear advice that he could be represented by counsel, and, at least if a felony were involved, the State would be required to provide counsel if his parents were unable to afford it. If the court acted on the basis of his confession, careful procedures would be required to assure its voluntariness. If the case went to trial, confrontation and opportunity for cross-examination would be guaranteed. So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere

[42] While appellee's brief suggests that the probation officer made some investigation of Gerald's home life, etc., there is not even a claim that the judge went beyond the point stated in the text.

[43] ARS §§ 8-201, 8-202.

verbiage, and reasons more persuasive than cliché can provide. As Wheeler and Cottrell have put it, "The rhetoric of the juvenile court movement has developed without any necessarily close correspondence to the realities of court and institutional routines." [44]

In *Kent* v. *United States, supra,* we stated that the Juvenile Court Judge's exercise of the power of the State as *parens patriae* was not unlimited. We said that "the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness." [45] With respect to the waiver by the juvenile court to the adult of jurisdiction over an offense committee by a youth, we said that "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons." [46] We announced with respect to such waiver proceedings that while "We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." [47] We reiterate this view, here in connection with a juvenile court adjudication of "delinquency," as a requirement

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[44] Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966), p. 35. The gap between rhetoric and reality is also emphasized in the Nat'l Crime Comm'n Report, pp. 80–81.

[45] 383 U. S., at 555.

[46] 383 U. S., at 554. THE CHIEF JUSTICE stated in a recent speech to a conference of the National Council of Juvenile Court Judges, that a juvenile court "must function within the framework of law and . . . in the attainment of its objectives it cannot act with unbridled caprice." Equal Justice for Juveniles, 15 Juvenile Court Judges Journal, No. 3, 14, 15 (1964).

[47] 383 U. S., at 562.

which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution.[48]

We now turn to the specific issues which are presented to us in the present case.

III.

Notice of Charges.

Appellants allege that the Arizona Juvenile Code is unconstitutional or alternatively that the proceedings before the Juvenile Court were constitutionally defective because of failure to provide adequate notice of the hearings. No notice was given to Gerald's parents when he was taken into custody on Monday, June 8. On that night, when Mrs. Gault went to the Detention Home, she was orally informed that there would be a hearing the next afternoon and was told the reason why Gerald was in custody. The only written notice Gerald's parents received at any time was a note on plain paper from Officer Flagg delivered on Thursday or Friday, June 11 or 12, to the effect that the judge had set Monday, June 15, "for further hearings on Gerald's delinquency."

A "petition" was filed with the court on June 9 by Officer Flagg, reciting only that he was informed and believed that "said minor is a delinquent minor and that it is necessary that some order be made by the Honorable Court for said minor's welfare." The applicable Arizona

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[48] The Nat'l Crime Comm'n Report recommends that "Juvenile courts should make fullest feasible use of preliminary conferences to dispose of cases short of adjudication." *Id.*, at 84. See also D. C. Crime Comm'n Report, pp. 662–665. Since this "consent decree" procedure would involve neither adjudication of delinquency nor institutionalization, nothing we say in this opinion should be construed as expressing any views with respect to such procedure. The problems of pre-adjudication treatment of juveniles, and of post-adjudication disposition, are unique to the juvenile process; hence what we hold in this opinion with regard to the procedural requirements at the adjudicatory stage has no necessary applicability to other steps of the juvenile process.

statute provides for a petition to be filed in Juvenile Court, alleging in general terms that the child is "neglected, dependent, or delinquent." The statute explicitly states that such a general allegation is sufficient, "without alleging the facts."[49] There is no requirement that the petition be served and it was not served upon, given, or shown to Gerald or his parents.[50]

The Supreme Court of Arizona rejected appellants' claim that due process was denied because of inadequate notice. It stated that "Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home." The court also pointed out that the Gaults appeared at the two hearings "without objection." The court held that because "the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past," advance notice of the specific charges or basis for taking the juvenile into custody and for the hearing is not necessary. It held that the appropriate rule is that "the infant and his parent or guardian will receive a petition only reciting a conclusion of delinquency.[51] But no later than the initial hearing by the judge, they must be advised of the facts involved in the case. If the charges are denied, they must be given a reasonable period of time to prepare."

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[49] ARS § 8-222 (B).

[50] Arizona's Juvenile Code does not provide for notice of any sort to be given at the commencement of the proceedings to the child or his parents. Its only notice provision is to the effect that if a person other than the parent or guardian is cited to appear, the parent or guardian shall be notified "by personal service" of the time and place of hearing. ARS § 8-224. The procedure for initiating a proceeding, as specified by the statute, seems to require that after a preliminary inquiry by the court, a determination may be made "that formal jurisdiction should be acquired." Thereupon the court may authorize a petition to be filed. ARS § 8-222. It does not appear that this procedure was followed in the present case.

[51] No such petition was served or supplied in the present case.

We cannot agree with the court's conclusion that adequate notice was given in this case. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity." [52] It is obvious, as we have discussed above, that no purpose of shielding the child from the public stigma of knowledge of his having been taken into custody and scheduled for hearing is served by the procedure approved by the court below. The "initial hearing" in the present case was a hearing on the merits. Notice at that time is not timely; and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding.[53] It does

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[52] Nat'l Crime Comm'n Report, p. 87. The Commission observed that "The unfairness of too much informality is . . . reflected in the inadequacy of notice to parents and juveniles about charges and hearings." *Ibid.*

[53] For application of the due process requirement of adequate notice in a criminal context, see, *e. g.*, *Cole* v. *Arkansas*, 333 U. S. 196 (1948); *In re Oliver*, 333 U. S. 257, 273–278 (1948). For application in a civil context, see, *e. g.*, *Armstrong* v. *Manzo*, 380 U. S. 545 (1965); *Mullane* v. *Central Hanover Tr. Co.*, 339 U. S. 306 (1950). Cf. also *Chaloner* v. *Sherman*, 242 U. S. 455 (1917). The Court's discussion in these cases of the right to timely and adequate notice forecloses any contention that the notice approved by the Arizona Supreme Court, or the notice actually given the Gaults, was constitutionally adequate. See also Anticau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q. 387, 395 (1961); Paulsen, Fairness

not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet. Nor, in the circumstances of this case, can it reasonably be said that the requirement of notice was waived.[54]

IV.

Right to Counsel.

Appellants charge that the Juvenile Court proceedings were fatally defective because the court did not advise Gerald or his parents of their right to counsel, and proceeded with the hearing, the adjudication of delinquency and the order of commitment in the absence of counsel for the child and his parents or an express waiver of the right thereto. The Supreme Court of Arizona pointed out that "there is disagreement [among the various jurisdictions] as to whether the court must advise the infant that he has a right to counsel." [55] It noted its own de-

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to the Juvenile Offender, 41 Minn. L. Rev. 547, 557 (1957). Cf. Standards, pp. 63–65; Procedures and Evidence in the Juvenile Court, A Guidebook for Judges, prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency (1962), pp. 9–23 (and see cases discussed therein).

[54] Mrs. Gault's "knowledge" of the charge against Gerald, and/or the asserted failure to object, does not excuse the lack of adequate notice. Indeed, one of the purposes of notice is to clarify the issues to be considered, and as our discussion of the facts, *supra*, shows, even the Juvenile Court Judge was uncertain as to the precise issues determined at the two "hearings." Since the Gaults had no counsel and were not told of their right to counsel, we cannot consider their failure to object to the lack of constitutionally adequate notice as a waiver of their rights. Because of our conclusion that notice given only at the first hearing is inadequate, we need not reach the question whether the Gaults ever received adequately specific notice even at the June 9 hearing, in light of the fact they were never apprised of the charge of being habitually involved in immoral matters.

[55] For recent cases in the District of Columbia holding that there must be advice of the right to counsel, and to have counsel appointed

cision in *State Dept. of Public Welfare* v. *Barlow*, 80 Ariz. 249, 296 P. 2d 298 (1956), to the effect "that *the parents* of an infant in a juvenile proceeding cannot be denied representation by counsel of their choosing." (Emphasis added.) It referred to a provision of the Juvenile Code which it characterized as requiring "that the probation officer shall look after the interests of neglected, delinquent and dependent children," including representing their interests in court.[55] The court argued that "The parent and the probation officer may be relied upon to protect the infant's interests." Accordingly it rejected the proposition that "due process requires that an infant have a right to counsel." It said that juvenile courts have the discretion, but not the duty, to allow such representation; it referred specifically to the situation in which the Juvenile Court discerns conflict between the child and his parents as an instance in which this discretion might be exercised. We do not agree. Probation officers, in the Arizona scheme, are also arresting

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if necessary, see, *e. g., Shioutakin* v. *District of Columbia*, — U. S. App. D. C. —, 236 F. 2d 666 (1956); *Black* v. *United States*, — App. D. C. —, 355 F. 2d 104 (1965); *In re Poff*, 135 F. Supp. 224 (D. C. D. C. 1955). Cf. also Interest of Long, 184 So. 2d 861, 862 (Sup. Ct. Miss., 1966); *People* v. *Dotson*, 46 Cal. 2d 891, 299 P. 2d 875 (1956).

[55] The section cited by the court, ARS § 8-204-C, reads as follows:

"The probation officer shall have the authority of a peace officer. He shall:

"1. Look after the interests of neglected, delinquent and dependent children of the county.

"2. Make investigations and file petitions.

"3. Be present in court when cases are heard concerning children and represent their interests.

"4. Furnish the court information and assistance as it may require.

"5. Assist in the collection of sums ordered paid for the support of children.

"6. Perform other acts ordered by the court."

officers. They initiate proceedings and file petitions which they verify, as here, alleging the delinquency of the child; and they testify, as here, against the child. And here the probation officer was also superintendent of the Detention Home. The probation officer cannot act as counsel for the child. His role in the adjudicatory hearing, by statute and in fact, is as arresting officer and witness against the child. Nor can the judge represent the child. There is no material difference in this respect between adult and juvenile proceedings of the sort here involved. In adult proceedings, this contention has been foreclosed by decisions of this Court.[57] A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law,[58] to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."[59] Just as in *Kent* v. *United States*, *supra*, at 561–562, we indicated our agreement with the United States Court of Appeals for the District of Columbia Circuit that the assistance of counsel is essential for purposes of waiver proceedings, so we hold now that it is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration

[57] *Powell* v. *Alabama*, 287 U. S. 45, 61 (1932); *Gideon* v. *Wainwright*, 372 U. S. 335 (1963).

[58] In the present proceeding, for example, although the Juvenile Judge believed that Gerald's telephone conversation was within the condemnation of ARS § 13-377, he suggested some uncertainty because the statute prohibits the use of vulgar language "in the presence of or hearing of" a woman or child.

[59] *Powell* v. *Alabama*, 287 U. S. 45, 69 (1932).

in a state institution until the juvenile reaches the age of 21.[80]

During the last decade, court decisions,[81] experts,[82] and legislatures [83] have demonstrated increasing recognition of this view. In at least one-third of the States, statutes

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[80] This means that the commitment, in virtually all cases, is for a minimum of three years since jurisdiction of juvenile courts is usually limited to age 18 and under.

[81] See cases cited in note 55, *supra*.

[82] See, *e. g.*, Schinitsky, 17 The Record (N. Y. City Bar Assn.) 10 (1962); Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 568–573 (1957); Antieau, Constitutional Rights in Juvenile Courts, 46 Cornell L. Q. 387, 404–407 (1961); Paulsen, Kent v. United States: The Constitutional Context of Juvenile Cases, 1966 Sup. Ct. Rev. 167, 187–189; Ketcham, The Legal Renaissance in the Juvenile Court, 60 Nw. U. L. Rev. 585 (1965); Elson, Juvenile Courts and Due Process, in Justice for the Child (Rosenheim ed.) 95, 103–105 (1962); Note, Rights and Rehabilitation in Juvenile Courts, 67 Col. L. Rev. 281, 321–327 (1967). See also Nat'l Prob. and Parole Assoc., Standard Family Court Act (1959) § 19, and Standard Juvenile Court Act (1959) § 19, in NPPA Journal 99, 323 (1959) (hereinafter cited as Standard Family Court Act and Standard Juvenile Court Act, respectively).

[83] Only a few state statutes require advice of the right to counsel and to have counsel appointed. See N. Y. Family Court Act §§ 241, 249, 728, 741; Calif. Welfare & Inst'ns Code §§ 633, 634, 659, 700 (1966) (appointment is mandatory only if conduct would be a felony in the case of an adult); Minn. Stat. Ann. § 260.155 (2) (1966 Supp.) (see Comment of Legislative Commission accompanying this section); District of Columbia Legal Aid Act, D. C. Code § 2-2202 (1961) (Legal Aid Agency "shall make attorneys available to represent indigents . . . in proceedings before the juvenile court . . . ." See *Black* v. *United States*, — U. S. App D. C. —, ———, 355 F. 2d 104, 106–107 (1965), construing this Act as providing a right to appointed counsel and to be informed of that right). Other state statutes allow appointment on request, or in some classes of cases, or in the discretion of the court, etc. The state statutes are collected and classified in Riederer, The Role of Counsel in the Juvenile Court, 2 J. Fam. Law 16, 19–20 (1962), which, however, does not treat the statutes cited above. See also Note, Rights and Rehabilitation in Juvenile Courts, 67 Col. L. Rev. 281, 321–322 (1967).

now provide for the right of representation by retained counsel in juvenile delinquency proceedings, notice of the right, or assignment of counsel, or a combination of these. In other States, court rules have similar provisions.[64]

The President's Crime Commission has recently recommended that in order to assure "procedural justice for the child," it is necessary that "Counsel . . . . be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent." [65] As stated by the authoritative "Standards

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[64] Skoler and Tenney, Attorney Representation in Juvenile Court, 4 J. Fam. Law 77, 95–96 (1964); Riederer, The Role of Counsel in the Juvenile Court, 2 J. Fam. Law 16 (1962).

Recognition of the right to counsel involves no necessary interference with the special purposes of juvenile court procedures; indeed, it seems that counsel can play an important role in the process of rehabilitation. See Note, Rights and Rehabilitation in Juvenile Courts, 67 Col. L. Rev. 281, 324–327 (1967).

[65] Nat'l Crime Comm'n Report, pp. 86–87. The Commission's statement of its position is very forceful:

"The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires. The rights to confront one's accusers, to cross-examine witnesses, to present evidence and testimony of one's own, to be unaffected by prejudicial and unreliable evidence, to participate meaningfully in the dispositional decision, to take an appeal have substantial meaning for the overwhelming majority of persons brought before the juvenile court only if they are provided with competent lawyers who can invoke those rights effectively. The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot. Papers are drawn and charges expressed in legal language. Events follow one another in a manner that appears arbitrary and confusing to the uninitiated. Decisions, unexplained, appear too official to challenge. But with lawyers come records of proceedings; records make possible appeals

for Juvenile and Family Courts," published by the Children's Bureau of the United States Department of Health, Education, and Welfare:

> "As a component part of a fair hearing required by due process guaranteed under the 14th Amendment, notice of the right to counsel should be required at all hearings and counsel provided upon request when the family is financially unable to employ counsel." Standards, at p. 57.

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which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability.

"Fears have been expressed that lawyers would make juvenile court proceedings adversary. No doubt this is partly true, but it is partly desirable. Informality is often abused. The juvenile courts deal with cases in which facts are disputed and in which, therefore, rules of evidence, confrontation of witnesses, and other adversary procedures are called for. They deal with many cases involving conduct that can lead to incarceration or close supervision for long periods, and therefore juveniles often need the same safeguards that are granted to adults. And in all cases children need advocates to speak for them and guard their interests, particularly when disposition decisions are made. It is the disposition stage at which the opportunity arises to offer individualized treatment plans and in which the danger inheres that the court's coercive power will be applied without adequate knowledge of the circumstances.

"Fears also have been expressed that the formality lawyers would bring into juvenile court would defeat the therapeutic aims of the court. But informality has no necessary connection with therapy; it is a device that has been used to approach therapy, and it is not the only possible device. It is quite possible that in many instances lawyers, for all their commitment to formality, could do more to further therapy for their clients than can the small, overworked social staffs of the courts.

. . . . . .

"The Commission believes it is essential that counsel be appointed by the juvenile court for those who are unable to provide their own. Experience under the prevailing systems in which children are free to seek counsel of their choice reveals how empty of meaning the right is for those typically the subjects of juvenile court proceedings. Moreover, providing counsel only when the child is sophisticated

This statement was "reviewed" by the National Council of Juvenile Court Judges at its 1965 Convention and they "found no fault" with it.[66] The New York Family Court Act contains the following statement:

> "This act declares that minors have a right to the assistance of counsel of their own choosing or of law guardians[67] in neglect proceedings under article three and in proceedings to determine juvenile delinquency and whether a person is in need of supervision under article seven. This declaration is based on a finding that counsel is often indispensable to a practical realization of due process of law and may be helpful in making reasoned determinations of fact and proper orders of disposition." [68]

The Act provides that "At the commencement of any hearing" under the delinquency article of the statute, the juvenile and his parent shall be advised of the juvenile's

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enough to be aware of his need and to ask for one or when he fails to waive his announced right are not enough, as experience in numerous jurisdictions reveals.

"The Commission recommends:

"COUNSEL SHOULD BE APPOINTED AS A MATTER OF COURSE WHEREVER COERCIVE ACTION IS A POSSIBILITY, WITHOUT REQUIRING ANY AFFIRMATIVE CHOICE BY CHILD OR PARENT."

[66] Lehman, A Juvenile's Right to Counsel in A Delinquency Hearing, 17 Juvenile Court Judge's Journal 53 (1966). In an interesting review of the 1966 edition of the Children's Bureau's "Standards," Rosenheim, Standards for Juvenile and Family Courts: Old Wine in a New Bottle, 1 Fam. L. Q. 25, 27 (1967), the author observes that "The 'Standards' of 1966, just like the 'Standards' of 1954, are valuable precisely because they represent a diligent and thoughtful search for an accommodation between the aspirations of the founders of the juvenile court and the grim realities of life against which, in part, the due process of criminal and civil law offers us protection."

[67] These are lawyers designated, as provided by the statute, to represent minors. N. Y. Family Court Act § 242.

[68] N. Y. Family Court Act § 241.

"right to be represented by counsel chosen by him or his parent . . . or by a law guardian assigned by the court . . . ."[69] The California Act (1961) also requires appointment of counsel.[70]

We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

At the habeas corpus proceeding, Mrs. Gault testified that she knew that she could have appeared with counsel

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[69] N. Y. Family Court Act § 741. For accounts of New York practice under the new procedures, see Isaacs, The Role of the Lawyer in Representing Minors in the New Family Court, 12 Buffalo L. Rev. 501 (1963); Dembitz, Ferment and Experiment in New York: Juvenile Cases in the New Family Court, 48 Cornell L. Q. 499, 508–512 (1963). Since introduction of the law guardian system in September of 1962, it is stated that attorneys are present in the great majority of cases. Harvard Law Review Note, p. 796. See New York Judicial Conference, Twelfth Annual Report, pp. 288–291 (1967), for detailed statistics on representation of juveniles in New York. For the situation before 1962, see Schinitsky, The Role of the Lawyer in Children's Court, 17 The Record (N. Y. City Bar Assn.) 10 (1962). In the District of Columbia, where statute and court decisions require that a lawyer be appointed if the family is unable to retain counsel, see note 63, *supra*, and where the juvenile and his parents are so informed at the initial hearing, about 85 to 90% do not choose to be represented and sign a written waiver form. D. C. Crime Comm'n Report, p. 646. The Commission recommends adoption in the District of Columbia of a "law guardian" system similar to that of New York, with more effective notification of the right to appointed counsel, in order to eliminate the problems of procedural fairness, accuracy of fact-finding, and appropriateness of disposition which the absence of counsel in so many juvenile court proceedings involves. *Id.*, at 681–685.

[70] See note 63, *supra*.

at the juvenile hearing. This knowledge is not a waiver of the right to counsel which she and her juvenile son had, as we have defined it. They had a right expressly to be advised that they might retain counsel and to be confronted with the need for specific consideration of whether they did or did not choose to waive the right. If they were unable to afford to employ counsel, they were entitled in view of the seriousness of the charge and the potential commitment, to appointed counsel, unless they chose waiver. Mrs. Gault's knowledge that she could employ counsel is not an "intentional relinquishment or abandonment" of a fully known right.[71]

V.

Confrontation, Self-Incrimination, Cross-Examination.

Appellants urge that the writ of habeas corpus should have been granted because of the denial of the rights of confrontation and cross-examination in the Juvenile Court hearings, and because the privilege against self-incrimination was not observed. The Juvenile Court Judge testified at the habeas corpus hearing that he had proceeded on the basis of Gerald's admissions at the two hearings. Appellants attack this on the ground that the admissions were obtained in disregard of the privilege against self-incrimination.[72] If the confession is disregarded, appellants argue that the delinquency conclusion, since it was fundamentally based on a finding that Gerald had made lewd remarks during the phone call to Mrs. Cook, is fatally defective for failure to accord the rights of confrontation and cross-examination which the Due Process Clause of the Fourteenth Amendment of the

[71] *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938); *Carnley* v. *Cochran*, 369 U. S. 506 (1962); *United States ex rel. Brown* v. *Fay*, 242 F. Supp. 273 (D. C. S. D. N. Y. 1965).

[72] The privilege is applicable to state proceedings. *Malloy* v. *Hogan*, 378 U. S. 1 (1964).

Federal Constitution guarantees in state proceedings generally."[13]

Our first question, then, is whether Gerald's admission was improperly obtained and relied on as the basis of decision, in conflict with the Federal Constitution. For this purpose, it is necessary briefly to recall the relevant facts.

Mrs. Cook, the complainant, and the recipient of the alleged telephone call, was not called as a witness. Gerald's mother asked the Juvenile Court Judge why Mrs. Cook was not present and the judge replied that "she didn't have to be present." So far as appears, Mrs. Cook was spoken to only once, by Office Flagg, and this was by telephone. The judge did not speak with her on any occasion. Gerald had been questioned by the probation officer after having been taken into custody. The exact circumstances of this questioning do not appear but any admissions Gerald may have made at this time do not appear in the record.[14] Gerald was also questioned by the Juvenile Court Judge at each of the two hearings. The judge testified in the habeas corpus proceeding that Gerald admitted making "some of the lewd statements . . . [but not] any of the more serious lewd statements." There was conflict and uncertainty among the witnesses at the habeas corpus proceeding—the Juvenile Court Judge, Mr. and Mrs. Gault, and the probation officer—as to what Gerald did or did not admit.

We shall assume that Gerald made admissions of the sort described by the Juvenile Court Judge, as quoted

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[13] *Pointer* v. *Texas*, 380 U. S. 400 (1965); *Douglas* v. *Alabama*, 380 U. S. 415 (1965).

[14] For this reason, we cannot consider the status of Gerald's alleged admissions to the probation officers. Cf., however, Comment, Miranda Guarantees in the California Juvenile Court, 7 Santa Clara Lawyer, 114 (1966).

above. Neither Gerald nor his parents was advised that he did not have to testify or make a statement, or that an incriminating statement might result in his commitment as a "delinquent."

The Arizona Supreme Court rejected appellant's contention that Gerald had a right to be advised that he need not incriminate himself. It said: "We think the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination."

In reviewing this conclusion of Arizona's Supreme Court, we emphasize again that we are here concerned only with proceedings to determine whether a minor is a "delinquent" and which may result in commitment to a state institution. Specifically, the question is whether, in such a proceeding, an admission by the juvenile may be used against him in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent. In light of *Miranda* v. *Arizona*, 384 U. S. 436 (1966), we must also consider whether, if the privilege against self-incrimination is available, it can effectively be waived unless counsel is present or the right to counsel has been waived.

It has long been recognized that the eliciting and use of confessions or admissions require careful scrutiny. Dean Wigmore states:

> "The ground of distrust of confessions made in certain situations is, in a rough and indefinite way, judicial experience. There has been no careful collection of statistics of untrue confessions, nor has any great number of instances been even loosely reported . . . but enough have been verified to fortify the conclusion, based on ordinary observation of

human conduct, that under certain stresses a person, especially one of defective mentality or peculiar temperament, may falsely acknowledge guilt. This possibility arises wherever the innocent person is placed in such a situation that the untrue acknowledgement of guilt is at the time the more promising of two alternatives between which he is obliged to choose; that is, he chooses any risk that may be in falsely acknowledging guilt, in preference to some worse alternative associated with silence.

. . . . . .

"The principle, then, upon which a confession may be excluded is that it is, under certain conditions, *testimonially untrustworthy* . . . . [T]he essential feature is that the principle of exclusion is a testimonial one, analogous to the other principles which exclude narrations as untrustworthy . . . ." [78]

This Court has emphasised that admissions and confessions of juveniles require special caution. In *Haley* v. *Ohio*, *supra*, where this Court reversed the conviction of a 15-year-old boy for murder, MR. JUSTICE DOUGLAS said:

"What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinising the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year-old lad, questioned through the dead of night by relays of

[78] Wigmore on Evidence § 822 (3d ed. 1940).

police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a. m. But we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him. No friend stood at the side of this 15-year-old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning." [78]

In *Haley*, as we have discussed, the boy was convicted in adult court, and not a juvenile court. In notable decisions, the New York Court of Appeals and the Supreme Court of New Jersey have recently considered decisions of juvenile courts in which boys have been adjudged "delinquent" on the basis of confessions obtained in circumstances comparable to those in *Haley*. In both instances, the State contended before its highest tribunal that constitutional requirements governing inculpatory statements applicable in adult courts do not apply to juvenile proceedings. In each case, the State's contention was rejected, and the juvenile court's determination of delinquency was set aside on the grounds of inadmissibility of the confession. *In the Matters of Gregory W. and Gerald S.*, 19 N. Y. 2d 55, — N. E. 2d — (1966) (opinion by Keating, J.), and *In the Interests of*

[78] 332 U. S., at 599–600 (opinion of Mr. Justice Douglas, joined by Justices Black, Murphy and Rutledge; Justice Frankfurter concurred in a separate opinion).

Carlo and Stasilowicz, 48 N. J. 224, 225 A. 2d 110 (1966) (opinion by Proctor, J.).

The privilege against self-incrimination is, of course, related to the question of the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. The roots of the privilege are, however, far deeper. They tap the basic stream of religious and political principle because the privilege reflects the limits of the individual's attornment to the state and—in a philosophical sense—insists upon the equality of the individual and the State.[77] In other words, the privilege has a broader and deeper thrust than the rule which prevents the use of confessions which are the product of coercion because coercion is thought to carry with it the danger of unreliability. One of its purposes is to prevent the State, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the State in securing his conviction.[78]

It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children. The language of the Fifth Amendment, applicable to the States by operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive. As MR. JUSTICE WHITE, concurring, stated in *Murphy* v. *Waterfront Commission*, 378 U. S. 52 (1964), at 94:

"The privilege can be claimed in *any proceeding*, be it criminal or civil, administrative or judicial, in-

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[77] See Fortas, The Fifth Amendment, 25 Cleveland Bar Assn. Journal 91 (1954).

[78] See *Rogers* v. *Richmond*, 365 U. S. 534 (1961); *Culombe* v. *Connecticut*, 367 U. S. 568 (1961) (opinion of Frankfurter, J., joined by MR. JUSTICE STEWART); *Miranda* v. *Arizona*, 384 U. S. 436 (1966).

vestigatory or adjudicatory . . . it protects *any disclosures* which the witness may reasonably apprehend *could be used in a criminal prosecution or which could lead to other evidence that might be so used.*" (Emphasis supplied.)[79]

With respect to juveniles, both common observation and expert opinion emphasize that the "distrust of confessions made in certain situations" to which Dean Wigmore referred in the passage quoted above, is imperative in the case of children from an early age through adolescence. In New York, for example, the recently enacted Family Court Act provides that the juvenile and his parents must be advised at the start of the hearing of his right to remain silent.[80] The New York statute also provides that the police must attempt to communicate with the juvenile's parents before questioning him,[81] and that a confession may not be obtained from a child prior to notifying his parents or relatives and releasing the child either to them or to the Family Court.[82] In *In the Matters of Gregory W. and Gerald S.*, referred to above, the New York Court of Appeals held that the privilege against self-incrimination applies in juvenile delinquency cases and requires the exclusion of involuntary confessions, and that *People* v. *Lewis*, 260 N. Y. 171 (1932), holding the contrary, had been specifically overruled by statute.

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[79] See also *Malloy* v. *Hogan*, 378 U. S. 1 (1964); *McCarthy* v. *Arndstein*, 266 U. S. 34, 40 (1924).

[80] N. Y. Family Court Act § 741.

[81] N. Y. Family Court Act § 724. In *In the Matter of Williams*, 49 Misc. 2d 154, 267 N. Y. S. 2d 91 (1966), the New York Family Court held that "The failure of the police to notify this child's parents that he had been taken into custody, if not alone sufficient to render his confession inadmissible, is germane on the issue of its voluntary character. . . ." *Id.*, at —; 267 N. Y. S. 2d, at 106. The confession was held involuntary and therefore inadmissible.

[82] See *In the Matter of Addison*, 20 A. D. 2d 90, 245 N. Y. S. 2d 243 (1963).

The authoritative "Standards for Juvenile and Family Courts" concludes that, "Whether or not transfer to the criminal court is a possibility, certain procedures should always be followed. Before being interviewed [by the police] the child and his parents should be informed of his right to have legal counsel present and to refuse to answer questions or be fingerprinted [83] if he should so decide." [84]

Against the application to juveniles of the right to silence, it is argued that juvenile proceedings are "civil" and not "criminal," and therefore the privilege should not apply. It is true that the statement of the privilege in the Fifth Amendment, which is applicable to the States by reason of the Fourteenth Amendment, is that no person "shall be compelled in any *criminal case* to be a witness against himself." However, it is also clear that the availability of the privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites. The privilege may, for example, be claimed in a civil or administrative proceeding, if the statement is or may be inculpatory.[85]

It would be entirely unrealistic to carve out of the Fifth Amendment all statements by juveniles on the ground that these cannot lead to "criminal" involvement. In the first place, juvenile proceedings to determine "delinquency," which may lead to commitment to a state institution, must be regarded as "criminal" for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the

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[83] The issues relating to fingerprinting of juveniles are not presented here, and we express no opinion concerning them.

[84] Standards, p. 49.

[85] See note 79, *supra*, and accompanying text.

feeble enticement of the "civil" label-of-convenience which has been attached to juvenile proceedings. Indeed, in over half of the States, there is not even assurance that the juvenile will be kept in separate institutions, apart from adult "criminals." In those States juveniles may be placed in or transferred to adult penal institutions[86] after having been found "delinquent" by a juvenile court. For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called "criminal" or "civil." And our Constitution guarantees that no person shall be "compelled" to be a witness against himself when he is threatened with deprivation of his liberty—a command which this Court has broadly applied and generously implemented in accordance with the teaching of the history of the privilege and its great office in mankind's battle for freedom.[87]

In addition, apart from the equivalence for this purpose of exposure to commitment as a juvenile delinquent and exposure to imprisonment as an adult offender, the fact of the matter is that there is little or no assurance in Arizona, as in most if not all of the States, that a juvenile apprehended and interrogated by the police or even by the juvenile court itself will remain outside of the reach of adult courts as a consequence of the offense for which he has been taken into custody. In Arizona, as in other States, provision is made for juvenile courts to relinquish

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[86] Delinquent Children in Penal Institutions, Children's Bureau Pub. No. 415 (1964), p. 1.

[87] See, *e. g.*, *Miranda* v. *Arizona*, 384 U. S. 436 (1966); *Garrity* v. *New Jersey*, 385 U. S. 493 (1967); *Spevack* v. *Klein*, 385 U. S. 511 (1967); *Haynes* v. *Washington*, 373 U. S. 503 (1963); *Culombe* v. *Connecticut*, 367 U. S. 568 (1961); *Rogers* v. *Richmond*, 365 U. S. 534 (1961); *Malloy* v. *Hogan*, 378 U. S. 1 (1964); *Griffin* v. *California*, 380 U. S. 609 (1965).

or waive jurisdiction to the ordinary criminal courts.[88] In the present case, when Gerald Gault was interrogated concerning violation of a section of the Arizona Criminal Code, it could not be certain that the Juvenile Court Judge would decide to "suspend" criminal prosecution in court for adults by proceeding to an adjudication in Juvenile Court.[89]

It is also urged, as the Supreme Court of Arizona here asserted, that the juvenile and presumably his parents should not be advised of the juvenile's right to silence because confession is good for the child as the commencement of the assumed therapy of the juvenile court process, and he should be encouraged to assume an attitude of trust and confidence toward the officials of the juvenile process. This proposition has been subjected to widespread challenge on the basis of current reappraisals of the rhetoric and realities of the handling of juvenile offenders.

In fact, evidence is accumulating that confessions by juveniles do not aid in "individualized treatment," as the court below put it, and that compelling the child to answer questions, without warning or advice as to his right to remain silent, does not serve this or any other good purpose. In light of the observations of Wheeler and Cottrell,[90] and others, it seems probable that where children are induced to confess by "paternal" urgings on the part of officials and the confession is then fol-

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[88] Arizona Constitution, Art. 6, § 15 (as amended 1960); ARS §§ 8-223, 8-228 (a); Harvard Law Review Note, p. 793. Because of this possibility that criminal jurisdiction may attach it is urged that ". . . all of the procedural safeguards in the criminal law should be followed." Standards, p. 49. Cf. *Harling* v. *United States*, — U. S. App. D. C. —, 295 F. 2d 161 (1961).

[89] ARS § 8-228 (a).

[90] Juvenile Delinquency—Its Prevention and Control (Russell Sage Foundation, 1966).

lowed by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his confession, he is being punished.[91]

Further, authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of "confessions" by children. This Court's observations in *Haley v. United States*, are set forth above. The recent decision of the New York Court of Appeals referred to above, *In the Matters of Gregory W. and Gerald S.*, deals with a dramatic and, it is to be hoped, extreme example. Two 12-year-old Negro boys were taken into custody for the brutal assault and rape of two aged domestics, one of whom died as the result of the attack. One of the boys was schizophrenic and had been locked in the security ward of a mental institution at the time of the attacks. By a process that may best be described as bizarre, his confession was obtained by the police. A psychiatrist testified that the boy would admit "whatever he thought was expected so that he could get out of the immediate situation." The other 12-year-old also "confessed." Both confessions were in specific detail, albeit they contained various inconsistencies. The Court of Appeals, in an opinion by Keating, J., concluded that the confessions were products of the will of the police instead of the boys. The confessions were therefore held involuntary and the order of the Appellate Division affirming the order of the Family Court adjudging the defendants to be juvenile delinquents was reversed.

A similar and equally instructive case has recently been decided by the Supreme Court of New Jersey. *In the Interests of Carlo and Stasilowicz, supra.* The body of a 10-year-old girl was found. She had been strangled. Neighborhood boys who knew the girl were questioned. The two appellants, aged 13 and 15, confessed to the

[91] *Id.*, at 33. See also the other materials cited in note 37, *supra*.

police, with vivid detail and some inconsistencies. At the Juvenile Court hearing, both denied any complicity in the killing. They testified that their confessions were the product of fear and fatigue due to extensive police grilling. The Juvenile Court Judge found that the confessions were voluntary and admissible. On appeal, in an extensive opinion by Proctor, J., the Supreme Court of New Jersey reversed. It rejected the State's argument that the constitutional safeguard of voluntariness governing the use of confessions does not apply in proceedings before the juvenile court. It pointed out that under New Jersey court rules, juveniles under the age of 16 accused of committing a homicide are tried in a proceeding which "has all of the appurtenances of a criminal trial," including participation by the county prosecutor, and requirements that the juvenile be provided with counsel, that a stenographic record be made, etc. It also pointed out that under New Jersey law, the confinement of the boys after reaching age 21 could be extended until they had served the maximum sentence which could have been imposed on an adult for such a homicide, here found to be second degree murder carrying up to 30 years' imprisonment.[92] The court concluded that the confessions were involuntary, stressing that the boys, contrary to statute, were placed in the police station and there interrogated; [93] that the parents of both boys were not allowed to see them while they were being interrogated; [94] that inconsistencies appeared

[92] N. J. Stats. 2A:4–37 (b)(2) (Supp. 1966); N. J. Stats. 2A:113–4.

[93] N. J. Stats. 2A:4–32, 33. The court emphasized that the "frightening atmosphere" of a police station is likely to have "harmful effects on the mind and will of the boy," citing *In the Matter of Rutane*, 234 N. Y. S. 2d 777 (Fam. Ct. Kings Co., 1962).

[94] The court held that this alone might be enough to show that the confessions were involuntary "even though, as the police testified, the boys did not wish to see their parents" (citing *Gallegos* v. *Colorado*, 370 U. S. 49 (1962)).

among the various statements of the boys and with the objective evidence of the crime; and that there were protracted periods of questioning. The court noted the State's contention that both boys were advised of their constitutional rights before they made their statements, but it held that this should not be given "significant weight in our determination of voluntariness." [95] Accordingly, the judgment of the Juvenile Court was reversed.

In a recent case before the Juvenile Court of the District of Columbia, Judge Ketcham rejected the proffer of evidence as to oral statements made at police headquarters by four juveniles who had been taken into custody for alleged involvement in an assault and attempted robbery. *In the Matter of Four Youths,* Nos. 28–776–J, 28–778–J, 28–783–J, 28–859–J, Juvenile Court of the District of Columbia, April 7, 1961. The court explicitly stated that it did not rest its decision on a showing that the statements were involuntary, but because they were untrustworthy. Judge Ketcham said:

> "Simply stated, the Court's decision in this case rests upon the considered opinion—after nearly four busy years on the Juvenile Court bench during which

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[95] The court quoted the following passage from *Haley* v. *Ohio, supra,* at 601:

"But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain."

the testimony of thousands of such juveniles has been heard—that the statements of adolescents under 18 years of age who are arrested and charged with violations of law are frequently untrustworthy and often distort the truth."

We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, juvenile courts and appellate tribunals in administering the privilege. If counsel is not present for some permissible reason when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright or despair.[56]

The "confession" of Gerald Gault was first obtained by Officer Flagg, out of the presence of Gerald's parents,

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[56] The New York Family Court Act, § 744 (b), provides that "an uncorroborated confession made out of court by a respondent is not sufficient" to constitute the required "preponderance of the evidence."

See *United States* v. *Morales*, 233 F. Supp. 160 (D. C. Mont. 1964), holding a confession inadmissible in proceedings under the Federal Juvenile Delinquency Act because, in the circumstances in which it was made, the District Court could not conclude that it "was freely made while Morales was afforded all of the requisites of due process required in the case of a sixteen year old boy of his experience." *Id.*, at 170.

without counsel and without advising him of his right to silence, as far as appears. The judgment of the Juvenile Court was stated by the judge to be based on Gerald's admission in court. Neither "admission" was reduced to writing, and, to say the least, the process by which the "admissions" were obtained and received must be characterized as lacking the certainty and order which are required of proceedings of such formidable consequences.[87] Apart from the "admission," there was nothing upon which a judgment or finding might be based. There was no sworn testimony. Mrs. Cook, the complainant, was not present. The Arizona Supreme Court held that "sworn testimony must be required of all witnesses including police officers, probation officers and others who are part of or officially related to the juvenile court structure." We hold that this is not enough. No reason is suggested or appears for a different rule in respect of sworn testimony in juvenile courts than in adult tribunals. Absent a valid confession adequate to support the determination of the Juvenile Court, confrontation and sworn testimony by witnesses available for cross-examination were essential for a finding of "delinquency" and an order committing Gerald to a state institution for a maximum of six years.

The recommendations in the Children's Bureau's "Standards for Juvenile and Family Courts" are in general accord with our conclusions. They state that testimony should be under oath and that only competent material and relevant evidence under rules applicable to civil cases should be admitted in evidence.[88] The

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[87] Cf. *Jackson* v. *Denno*, 378 U. S. 368 (1964); *Miranda* v. *Arizona*, 384 U. S. 436 (1966).

[88] Standards, pp. 72–73. The Nat'l Crime Comm'n Report concludes that "the evidence admissible at the adjudicatory hearing

New York Family Court Act contains a similar provision.[99]

As we said in *Kent* v. *United States*, 383 U. S. 541, 554 (1966), with respect to waiver proceedings, "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony. . . ." We now hold that, absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.

VI.

Appellate Review and Transcript of Proceedings.

Appellants urge that the Arizona statute is unconstitutional under the Due Process Clause because, as construed by its Supreme Court, "there is no right of appeal from a juvenile court order. . . ." The court held that there is no right to a transcript because there is no right

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should be so limited that findings are not dependent upon or influenced by hearsay, gossip, rumor, and other unreliable types of information. To minimize the danger that adjudication will be affected by inappropriate considerations, social investigation reports should not be made known to the judge in advance of adjudication." *Id.*, at 87 (bold face eliminated). See also Note, Rights and Rehabilitation in Juvenile Courts, 67 Col. L. Rev. 281, 336 (1967): "At the adjudication stage, the use of clearly incompetent evidence in order to prove the youth's involvement in the alleged misconduct . . . is not justifiable. Particularly in delinquency cases, where the issue of fact is the commission of a crime, the introduction of hearsay—such as the report of a policeman who did not witness the events—contravenes the purposes underlying the Sixth Amendment right of confrontation." (Footnote omitted.)

[99] N. Y. Family Court Act § 744 (a). See also Harvard Law Review Note, p. 795. Cf. *Willner* v. *Committee on Character*, 373 U. S. 96 (1963).

to appeal and because the proceedings are confidential and any record must be destroyed after a prescribed period of time.[100] Whether a transcript or other recording is made, it held, is a matter for the discretion of the juvenile court.

This Court has not held that a State is required by the Federal Constitution "to provide appellate courts or a right to appellate review at all." [101] In view of the fact that we must reverse the Supreme Court of Arizona's affirmance of the dismissal of the writ of habeas corpus for other reasons, we need not rule on this question in the present case or upon the failure to provide a transcript or recording of the hearings—or, indeed, the failure of the juvenile court judge to state the grounds for his conclusion. Cf. *Kent* v. *United States*, *supra*, at 561, where we said, in the context of a decision of the juvenile court waiving jurisdiction to the adult court, which by local law, was applicable: ". . . it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor." As the present case illustrates, the consequences of failure to provide an appeal, to record the proceedings, or to make findings or state the grounds for the juvenile court's conclusion may be to throw a burden upon the machinery for habeas corpus, to saddle the reviewing process with the burden of attempting to reconstruct a record, and to impose upon the juvenile judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him.[102]

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[100] ARS § 2-238.

[101] *Griffin* v. *Illinois*, 351 U. S. 12, 18 (1956).

[102] "Standards for Juvenile and Family Courts" recommends "written findings of fact, some form of record of the hearing" "and the right to appeal." Standards, p. 8. It recommends verbatim recording of the hearing by stenotypist or mechanical recording (p. 76) and

For the reasons stated, the judgment of the Supreme Court of Arizona is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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urges that the judge make clear to the child and family their right to appeal (p. 78). See also, Standard Family Court Act §§ 19, 24, 28; Standard Juvenile Court Act §§ 19, 24, 28. The Harvard Law Review Note, at p. 799, states that "The result [of the infrequency of appeals due to absence of record, indigency, etc.] is that juvenile court proceedings are largely unsupervised." The Nat'l Crime Comm'n Report observes, at p. 86, that "records make possible appeals which, even if they do not occur, impart by their possibility a healthy atmosphere of accountability."

SUPREME COURT OF THE UNITED STATES

No. 116.—October Term, 1966.

In the Matter of the Application of Paul L. Gault and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor, Appellants.	On Appeal From the Supreme Court of Arizona.

[May 15, 1967.]

Mr. Justice Black, concurring.

The juvenile court laws of Arizona and other States, as the Court points out, are the result of plans prompted by humane and forward-looking people to provide a system of courts, procedures, and sanctions deemed to be less harmful and more lenient to children than to adults. For this reason such state laws generally provide less formal and less public methods for the trial of children. In line with this policy, both courts and legislators have shrunk back from labeling these laws as "criminal" and have preferred to call them "civil." This, in part, was to prevent the full application to juvenile court cases of the Bill of Rights safeguards, including notice as provided in the Sixth Amendment,[1] the right to counsel guaranteed by the Sixth,[2] the right against self-incrimination guaranteed by the Fifth,[3] and the right

[1] "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . . ." Also requiring notice is the Fifth Amendment's provision that "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury . . . ."

[2] "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel in his defence."

[3] "No person . . . shall be compelled in any criminal case to be a witness against himself. . . ."

to confrontation guaranteed by the Sixth.[4] The Court here holds, however, that these four Bill of Rights safeguards apply to protect a juvenile accused in a juvenile court on a charge under which he can be imprisoned for a term of years. This holding strikes a well-nigh fatal blow to much that is unique about the juvenile courts in the Nation. For this reason, there is much to be said for the position of my Brother STEWART that we should not pass on all these issues until they are more squarely presented. But since the majority of the Court chooses to decide all of these questions, in this situation I must either do the same or leave my views unexpressed on the important issues determined. In these circumstances, I feel impelled to express my views.

The juvenile court planners envisaged a system that would practically immunize juveniles from "punishment" for "crimes" in an effort to save them from youthful indiscretions and stigmas due to criminal charges or convictions. I agree with the Court, however, that this exalted ideal has failed of achievement since the beginning of the system. Indeed, the state laws from the first one on contained provisions, written in emphatic terms, for arresting and charging juveniles with violations of state criminal laws, as well as for taking juveniles by force of law away from their parents and turning them over to different individuals or groups or for confinement within some state school or institution for a number of years. The latter occurred in this case. Young Gault was arrested and detained on a charge of violating an Arizona penal law by using vile and offensive language to a lady on the telephone. If an adult, he could only have been fined or imprisoned for two months for his conduct. As a juvenile, however, he was put through a more or less secret, informal hearing by the

[4] "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . ."

court, after which he was ordered, or more realistically "sentenced," to confinement in Arizona's Industrial School until he reaches 21 years of age. Thus, in a juvenile system designed to lighten or avoid punishment for criminality, he was ordered by the State to six years' confinement in what is in all but name a penitentiary or jail.

Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with all the guarantees of all the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the law—an invidious discrimination—to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards. I consequently agree with the Court that the Arizona law as applied here denied to the parents and their son the right of notice, right to counsel, right against self-incrimination, and right to confront the witnesses against young Gault. Appellants are entitled to these rights, not because "fairness, impartiality and orderliness—in short, the essentials of due process" require them and not because they are "the procedural rules which have been fashioned from the generality of due process," but because they are specifically and unequivocally granted by provisions of the Fifth and Sixth Amendments which the Fourteenth Amendment makes applicable to the States.

A few words should be added because of the opinion of my Brother HARLAN who rests his concurrence and dissent on the Due Process Clause alone. He reads that clause alone as allowing this Court "to determine what forms of procedural protection are necessary to guar-

antee the fundamental fairness of juvenile proceedings" "in a fashion consistent with the 'traditions and conscience of our people.'" Cf. *Rochin* v. *California*, 342 U. S. 165. He believes that the Due Process Clause gives this Court the power, upon weighing a "compelling public interest," to impose on the States only those specific constitutional rights which the Court deems "imperative" and "necessary" to comport with the Court's notions of "fundamental fairness."

I cannot subscribe to any such interpretation of the Due Process Clause. Nothing in its words or its history permits it, and "fair distillations of relevant judicial history" are no substitute for the words and history of the clause itself. The phrase "due process of law" has through the years evolved as the successor in purpose and meaning to the words "law of the land" in Magna Charta which more plainly intended to call for a trial according to the existing law of the land in effect at the time an alleged offense had been committed. That provision in Magna Charta was designed to prevent defendants from being tried according to criminal laws or proclamations specifically promulgated to fit particular cases or to attach new consequences to old conduct. Nothing done since Magna Charta can be pointed to as intimating that the Due Process Clause gives courts power to fashion laws in order to meet new conditions, to fit the "decencies" of changed conditions, or to keep their consciences from being shocked by legislation, state or federal.

And, of course, the existence of such awesome judicial power cannot be buttressed or created by relying on the word "procedural." Whether labeled as "procedural" or "substantive," the Bill of Rights safeguards, far from being mere "tools with which" other unspecified "rights could be fully vindicated," are the very vitals of a sound constitutional legal system designed to protect and safe-

guard the most cherished liberties of a free people. These safeguards were written into our Constitution not by judges but by Constitution makers. Freedom in this Nation will be far less secure the very moment that it is decided that judges can determine which of these safeguards "should" or "should not be imposed" according to their notions of what constitutional provisions are consistent with the "traditions and conscience of our people." Judges with such power, even though they profess to "proceed with restraint," will be above the Constitution, with power to write it, not merely to interpret it, which I believe to be the only power constitutionally committed to judges.

There is one ominous sentence, if not more, in my Brother HARLAN's opinion which bodes ill, in my judgment, both for legislative programs and constitutional commands. Speaking of procedural safeguards in the Bill of Rights, he says:

> "These factors in combination suggest that legislatures may properly expect only a cautious deference for their procedural judgments but that conversely, courts must exercise their special responsibility for procedural guarantees with care to permit ample scope for achieving the purposes of legislative programs . . . . [T]he court should necessarily proceed with restraint."

It is to be noted here that this case concerns Bill of Rights Amendments; that the "procedure" power my Brother HARLAN claims for the Court here relates solely to Bill of Rights safeguards; and that he is here claiming for the Court a supreme power to fashion new Bill of Rights safeguards according to the Court's notions of what fits tradition and conscience. I do not believe that the Constitution vests any such power in judges, either in the Due Process Clause or anywhere else. Consequently,

I do not vote to invalidate this Arizona law on the ground that it is "unfair" but solely on the ground that it violates the Fifth and Sixth Amendments made obligatory on the States by the Fourteenth Amendment. Cf. *Pointer* v. *Texas*, 380 U. S. 400, 412 (Goldberg, J., concurring). It is enough for me that the Arizona law as here applied collides head-on with the Fifth and Sixth Amendments in the four respects mentioned. The only relevance to me of the Due Process Clause is that it would, of course, violate due process or the "law of the land" to enforce a law that collides with the Bill of Rights.

SUPREME COURT OF THE UNITED STATES

No. 116.—October Term, 1966.

In the Matter of the Application of Paul L. Gault and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor, Appellants.	On Appeal From the Supreme Court of Arizona.

[May 15, 1967.]

Mr. Justice White, concurring.

I join the Court's opinion except for Part V. I also agree that the privilege against compelled self-incrimination applies at the adjudicatory stage of juvenile court proceedings. I do not, however, find an adequate basis in the record for determining whether that privilege was violated in this case. The Fifth Amendment protects a person from being "compelled" in any criminal proceeding to be a witness against himself. Compulsion is essential to a violation. It may be that when a judge, armed with the authority he has or which people think he has, asks questions of a party or a witness in an adjudicatory hearing, that person, especially if a minor, would feel compelled to answer, absent a warning to the contrary or similar information from some other source. The difficulty is that the record made at the habeas corpus hearing, which is the only information we have concerning the proceedings in the juvenile court, does not directly inform us whether petitioner or his parents were told of petitioner's right to remain silent; nor does it reveal whether the parties were aware of the privilege from some other source, just as they were already aware that they had the right to have the help of counsel and to have witnesses on their behalf. The petition for habeas corpus did not raise the

Fifth Amendment issue nor did any of the witnesses focus on it.

I have previously recorded my views with respect to what I have deemed unsound applications of the Fifth Amendment. See, for example, *Miranda* v. *Arizona*, 384 U. S. 436, 526, and *Malloy* v. *Hogan*, 378 U. S. 1, 33, dissenting opinions. These views, of course, have not prevailed. But I do hope that the Court will proceed with some care in extending the privilege, with all its vigor, to proceedings in juvenile court, particularly the nonadjudicatory stages of those proceedings.

In any event, I would not reach the Fifth Amendment issue here. I think the Court is clearly ill-advised to review this case on the basis of *Miranda* v. *Arizona*, since the adjudication of delinquency took place in 1964, long before the *Miranda* decision. See *Johnson* v. *New Jersey*, 384 U. S. 719. Under these circumstances, this case is a poor vehicle for resolving a difficult problem. Moreover, no prejudice to appellants is at stake in this regard. The judgment below must be reversed on other grounds and in the event further proceedings are to be had, petitioner will have counsel available to advise him.

For somewhat similar reasons, I would not reach the questions of confrontation and cross-examination which are also dealt with in Part V of the opinion.

SUPREME COURT OF THE UNITED STATES

No. 116.—October Term, 1966.

In the Matter of the Application of Paul L. Gault and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor, Appellants.	On Appeal From the Supreme Court of Arizona.

[May 15, 1967.]

Mr. Justice Harlan, concurring in part and dissenting in part.

Each of the 50 States has created a system of juvenile or family courts, in which distinctive rules are employed and special consequences imposed. The jurisdiction of these courts commonly extends both to cases which the States have withdrawn from the ordinary processes of criminal justice, and to cases which involve acts that, if performed by an adult, would not be penalized as criminal. Such courts are denominated civil, not criminal, and are characteristically said not to administer criminal penalties. One consequence of these systems, at least as Arizona construes its own, is that certain of the rights guaranteed to criminal defendants by the Constitution are withheld from juveniles. This case brings before this Court for the first time the question of what limitations the Constitution places upon the operation of such tribunals.[1] For reasons which follow, I have concluded that the Court has gone too far in some respects, and fallen short in others, in assessing the procedural requirements demanded by the Fourteenth Amendment.

[1] *Kent* v. *United States*, 383 U. S. 541, decided at the 1965 Term, did not purport to rest on constitutional grounds.

I.

I must first acknowledge that I am unable to determine with any certainty by what standards the Court decides that Arizona's juvenile courts do not satisfy the obligations of due process. The Court's premise, itself the product of reasoning which is not described, is that the "constitutional and theoretical basis" of state systems of juvenile and family courts is "debatable"; it buttresses these doubts by marshaling a body of opinion which suggests that the accomplishments of these courts have often fallen short of expectations.[2] The Court does not indicate at what points or for what purposes such views, held either by it or by other observers, might be pertinent to the present issues. Its failure to provide any discernible standard for the measurement of due process in relation to juvenile proceedings unfortunately might be understood to mean that the Court is concerned principally with the wisdom of having such courts at all.

If this is the source of the Court's dissatisfaction, I cannot share it. I should have supposed that the constitutionality of juvenile courts was beyond proper question under the standards now employed to assess the substantive validity of state legislation under the Due Process Clause of the Fourteenth Amendment. It can scarcely be doubted that it is within the State's competence to adopt measures reasonably calculated to meet more effectively the persistent problems of juvenile delinquency; as the opinion for the Court makes abundantly

[2] It is appropriate to observe that, whatever the relevance the Court may suppose that this criticism has to present issues, many of the critics have asserted that the deficiencies of juvenile courts have stemmed chiefly from the inadequacy of the personnel and resources available to those courts. See, *e. g.*, Paulsen, Kent v. United States, 1966 Sup. Ct. Rev. 167, 191–192; Handler, The Juvenile Court and the Adversary System, 1965 Wis. L. Rev. 7, 46.

plain, these are among the most vexing and ominous of the concerns which now face communities throughout the country.

The proper issue here is, however, not whether the State may constitutionally treat juvenile offenders through a system of specialized courts, but whether the proceedings in Arizona's juvenile courts include procedural guarantees which satisfy the requirements of the Fourteenth Amendment. Among the first premises of our constitutional system is the obligation to conduct any proceeding in which an individual may be deprived of liberty or property in a fashion consistent with the "traditions and conscience of our people." *Snyder* v. *Massachusetts*, 291 U. S. 97, 105. The importance of these procedural guarantees is doubly intensified here. First, many of the problems with which Arizona is concerned are among those traditionally confined to the processes of criminal justice; their disposition necessarily affects in the most direct and substantial manner the liberty of individual citizens. Quite obviously, systems of specialized penal justice might permit erosion, or even evasion, of the limitations placed by the Constitution upon state criminal proceedings. Second, we must recognize that the character and consequences of many juvenile court proceedings have in fact closely resembled those of ordinary criminal trials. Nothing before us suggests that juvenile courts were intended as a device to escape constitutional constraints, but I entirely agree with the Court that we are nonetheless obliged to examine with circumspection the procedural guarantees the State has provided.

The central issue here, and the principal one upon which I am divided from the Court, is the method by which the procedural requirements of due process should be measured. It must at the outset be emphasized that the protections necessary here cannot be determined by

resort to any classification of juvenile proceedings either as criminal or as civil, whether made by the State or by this Court. Both formulae are simply too imprecise to permit reasoned analysis of these difficult constitutional issues. The Court should instead measure the requirements of due process by reference both to the problems which confront the State and to the actual character of the procedural system which the State has created. The Court has for such purposes chiefly examined three connected sources: first, the "settled usages and modes of proceeding," *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 277; second, the "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," *Hebert* v. *Louisiana*, 272 U. S. 312, 316; and third, the character and requirements of the circumstances presented in each situation. *FCC* v. *WJR*, 337 U. S. 265, 277; *Yakus* v. *United States*, 321 U. S. 414. See, further, my dissenting opinion in *Poe* v. *Ullman*, 367 U. S. 497, 522, and compare my opinion concurring in the result in *Pointer* v. *Texas*, 380 U. S. 400, 408. Each of these factors is relevant to the issues here, but it is the last which demands particular examination.

The Court has repeatedly emphasized that determination of the constitutionally required procedural safeguards in any situation requires recognition both of the "interests affected" and of the "circumstances involved." *FCC* v. *WJR*, *supra*, at 277. In particular, a "compelling public interest" must, under our cases, be taken fully into account in assessing the validity under the due process clauses of state or federal legislation and its application. See, *e. g.*, *Yakus* v. *United States*, *supra*, at 442; *Bowles* v. *Willingham*, 321 U. S. 503, 520; *Miller* v. *Schoene*, 276 U. S. 272, 279. Such interests would never warrant arbitrariness or the diminution of any specifically assured constitutional right, *Home Bldg. & Loan*

Assn. v. *Blaisdell*, 290 U. S. 398, 426, but they are an essential element of the context through which the legislation and proceedings under it must be read and evaluated.

No more evidence of the importance of the public interests at stake here is required than that furnished by the opinion of the Court; it indicates that "some 601,000 children under 18, or 2% of the total population of that age, came before juvenile courts" in 1965, and that "about one-fifth of all arrests for serious crimes" in 1965 were of juveniles. The Court adds that the rate of juvenile crime is steadily rising. All this, as the Court suggests, indicates the importance of these due process issues, but it mirrors no less vividly that state authorities are confronted by formidable and immediate problems involving the most fundamental social values. The state legislatures have determined that the most hopeful solution for these problems is to be found in specialized courts, organized under their own rules and imposing distinctive consequences. The terms and limitations of these systems are not identical, nor are the procedural arrangements which they include, but the States are uniform in their insistence that the ordinary processes of criminal justice are inappropriate, and that relatively informal proceedings, dedicated to premises and purposes only imperfectly reflected in the criminal law, are instead necessary.

It is well settled that the Court must give the widest deference to legislative judgments that concern the character and urgency of the problems with which the State is confronted. Legislatures are, as this Court has often acknowledged, the "main guardian" of the public interest, and, within their constitutional competence, their understanding of that interest must be accepted as "well-nigh" conclusive. *Berman* v. *Parker*, 348 U. S. 26, 32. This principle does not, however, reach all the questions essential to the resolution of this case. The legislative

judgments at issue here embrace assessments of the necessity and wisdom of procedural guarantees; these are questions which the Constitution has entrusted at least in part to courts, and upon which courts have been understood to possess particular competence. The fundamental issue here is, therefore, in what measure and fashion the Court must defer to legislative determinations which encompass constitutional issues of procedural protection.

It suffices for present purposes to summarize the factors which I believe to be pertinent. It must first be emphasized that the deference given to legislators upon substantive issues must realistically extend in part to ancillary procedural questions. Procedure at once reflects and creates substantive rights, and every effort of courts since the beginnings of the common law to separate the two has proved essentially futile. The distinction between them is particularly inadequate here, where the legislature's substantive preferences directly and unavoidably require judgments about procedural issues. The procedural framework is here a principal element of the substantive legislative system; meaningful deference to the latter must include a portion of deference to the former. The substantive-procedural dichotomy is, nonetheless, an indispensable tool of analysis, for it stems from fundamental limitations upon judicial authority under the Constitution. Its premise is ultimately that courts may not substitute for the judgments of legislators their own understanding of the public welfare, but must instead concern themselves with the validity under the Constitution of the methods which the legislature has selected. See, *e. g.*, *McLean* v. *Arkansas*, 211 U. S. 539, 547; *Olsen* v. *Nebraska*, 313 U. S. 236, 246–247. The Constitution has in this manner created for courts and legislators areas of primary responsibility which are essentially congruent to their areas of special competence. Courts are thus obliged both by constitutional command

and by their distinctive functions to bear particular responsibility for the measurement of procedural due process. These factors in combination suggest that legislatures may properly expect only a cautious deference for their procedural judgments, but that, conversely, courts must exercise their special responsibility for procedural guarantees with care to permit ample scope for achieving the purposes of legislative programs. Plainly, courts can exercise such care only if they have in each case first studied thoroughly the objectives and implementation of the program at stake; if, upon completion of those studies, the effect of extensive procedural restrictions upon valid legislative purposes cannot be assessed with reasonable certainty, the court should necessarily proceed with restraint.

The foregoing considerations, which I believe to be fair distillations of relevant judicial history, suggest three criteria by which the procedural requirements of due process should be measured here: first, no more restrictions should be imposed than are imperative to assure the proceedings' fundamental fairness; second, the restrictions which are imposed should be those which preserve, so far as possible, the essential elements of the State's purpose; and finally, restrictions should be chosen which will later permit the orderly selection of any additional protections which may ultimately prove necessary. In this way, the Court may guarantee the fundamental fairness of the proceeding, and yet permit the State to continue development of an effective response to the problems of juvenile crime.

II.

Measured by these criteria, only three procedural requirements should, in my opinion, now be deemed required of state juvenile courts by the Due Process Clause of the Fourteenth Amendment: first, timely

notice must be provided to parents and children of the nature and terms of any juvenile court proceeding in which a determination affecting their rights or interests may be made; second, unequivocal and timely notice must be given that counsel may appear in any such proceeding in behalf of the child and its parents, and that in cases in which the child may be confined in an institution, counsel may, in circumstances of indigency, be appointed for them; and third, the court must maintain a written record, or its equivalent, adequate to permit effective review on appeal or in collateral proceedings. These requirements would guarantee to juveniles the tools with which their rights could be fully vindicated, and yet permit the States to pursue without unnecessary hindrance the purposes which they believe imperative in this field. Further, their imposition now would later permit more intelligent assessment of the necessity under the Fourteenth Amendment of additional requirements, by creating suitable records from which the character and deficiencies of juvenile proceedings could be accurately judged. I turn to consider each of these three requirements.

The Court has consistently made plain that adequate and timely notice is the fulcrum of due process, whatever the purposes of the proceeding. See, *e. g.*, *Roller* v. *Holly*, 176 U. S. 398, 409; *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413, 424. Notice is ordinarily the prerequisite to effective assertion of any constitutional or other rights; without it, vindication of those rights must be essentially fortuitous. So fundamental a protection can neither be spared here nor left to the "favor or grace" of state authorities. *Central of Georgia Ry.* v. *Wright*, 207 U. S. 127, 138; *Coe* v. *Armour Fertilizer Works*, *supra*, at 425.

Provision of counsel and of a record, like adequate notice, would permit the juvenile to assert very much

more effectively his rights and defenses, both in the juvenile proceedings and upon direct or collateral review. The Court has frequently emphasized their importance in proceedings in which an individual may be deprived of his liberty, see *Gideon* v. *Wainwright*, 372 U. S. 335, and *Griffin* v. *Illinois*, 351 U. S. 12; this reasoning must include with special force those who are commonly inexperienced and immature. See *Powell* v. *Alabama*, 287 U. S. 45. The facts of this case illustrate poignantly the difficulties of review without either an adequate record or the participation of counsel in the proceeding's initial stages. At the same time, these requirements should not cause any substantial modification in the character of juvenile court proceedings: counsel, although now present in only a small percentage of juvenile cases, have apparently already appeared without incident in virtually all juvenile courts; [3] and the maintenance of a record should not appreciably alter the conduct of these proceedings.

The question remains whether certain additional requirements, among them the privilege against self-incrimination, confrontation, and cross-examination, must now, as the Court holds, also be imposed. I share in part the views expressed in my Brother WHITE's concurring opinion, but believe that there are other, and more deep-seated, reasons to defer, at least for the present, the imposition of such requirements.

Initially, I must vouchsafe that I cannot determine with certainty the reasoning by which the Court concludes that these further requirements are now imperative. The Court begins from the premise, to which it gives force at several points, that these courts need not

[3] The statistical evidence here is incomplete, but see generally Skoler & Tenney, Attorney Representation in Juvenile Courts, 4 J. of Fam. Law 77. They indicate that some 91% of the juvenile judges whom they polled favored representation by counsel in their courts. *Id.*, at 88.

satisfy "all of the requirements of a criminal trial." It therefore scarcely suffices to explain the selection of these particular procedural requirements for the Court to declare that juvenile court proceedings are essentially criminal, and thereupon to recall that these are requisites for a criminal trial. Nor does the Court's voucher of "authoritative opinion," which consists of four extraordinary juvenile cases, contribute materially to the solution of these issues. The Court has, even under its own premises, asked the wrong questions: the problem here is to determine what forms of procedural protection are necessary to guarantee the fundamental fairness of juvenile proceedings, and not which of the procedures now employed in criminal trials should be transplanted intact to proceedings in these specialized courts.

In my view, the Court should approach this question in terms of the criteria, described above, which emerge from the history of due process adjudication. Measured by them, there are compelling reasons at least to defer imposition of these additional requirements. First, quite unlike notice, counsel, and a record, these requirements might radically alter the character of juvenile court proceedings. The evidence from which the Court reasons that they would not is inconclusive,[4] and other available evidence suggests that they very likely would.[5] At the

[4] Indeed, my Brother BLACK candidly recognizes that such is apt to be the effect of today's decision, *ante*, p. —. The Court itself is content merely to rely upon inapposite language from the recommendations of the Children's Bureau, plus the terms of a single statue.

[5] The most cogent evidence of course consists of the steady rejection of these requirements by state legislatures and courts. The wide disagreement and uncertainty upon this question are also reflected in Paulsen, Kent v. United States, 1966 Sup. Ct. Rev. 167, 186, 191. See also Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 561–562; McLean, An Answer to the Challenge of Kent, 53 A. B. A. J. 456, 457; Alexander, Constitu-

least, it is plain that these additional requirements would contribute materially to the creation in these proceedings of the atmosphere of an ordinary criminal trial, and would, even if they do no more, thereby largely frustrate a central purpose of these specialized courts. Further, these are restrictions intended to conform to the demands of an intensely adversary system of criminal justice; the broad purposes which they represent might be served in juvenile courts with equal effectiveness by procedural devices more consistent with the premises of proceedings in those courts. As the Court apparently acknowledges, the hazards of self-accusation, for example, might be avoided in juvenile proceedings without the imposition of all the requirements and limitations which surround the privilege against self-incrimination. The guarantee of adequate notice, counsel, and a record would create conditions in which suitable alternative procedures could be devised; but, unfortunately, the Court's haste to impose restrictions taken intact from criminal procedure may well seriously hamper the development of such alternatives. Surely this illustrates that prudence and the principles of the Fourteenth Amendment alike require that the Court should now impose no more procedural restrictions than are imperative to assure fundamental fairness, and that the States should instead be permitted additional opportunities to develop without unnecessary hindrance their systems of juvenile courts.

I find confirmation for these views in two ancillary considerations. First, it is clear that an uncertain, but very substantial number of the cases brought to juvenile courts involve children who are not in any sense guilty of

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tional Rights in Juvenile Courts, 46 A. B. A. J. 1206; Shears, Legal Problems Peculiar to Children's Courts, 48 A. B. A. J. 719; Siler, The Need for Defense Counsel in the Juvenile Court, 11 Crime & Delin. 46, 57–58. Compare Handler, The Juvenile Court and the Adversary System, 1965 Wis. L. Rev. 7, 32.

criminal misconduct. Many of these children have simply the misfortune to be in some manner distressed; others have engaged in conduct, such as truancy, which is plainly not criminal.[6] Efforts are now being made to develop effective, and entirely noncriminal, methods of treatment for these children. In such cases, the state authorities are in the most literal sense acting *in loco parentis;* they are, by any standard, concerned with the child's protection, and not with his punishment. I do not question that the methods employed in such cases must be consistent with the constitutional obligation to act in accordance with due process, but certainly the Fourteenth Amendment does not demand that they be constricted by the procedural guarantees devised for ordinary criminal prosecutions. Cf. *Minnesota ex rel. Pearson* v. *Probate Court,* 309 U. S. 270. It must be remembered that the various classifications of juvenile court proceedings are, as the vagaries of the available statistics illustrate, often arbitrary or ambiguous; it would therefore be imprudent, at the least, to build upon these classifications rigid systems of procedural requirements which would be applicable, or not, in accordance with the descriptive label given to the particular proceeding. It is better, it seems to me, to begin by now requiring the essential elements of fundamental fairness in juvenile courts, whatever the label given by the State to the proceeding; in this way the Court could avoid imposing unnecessarily rigid restrictions, and yet escape dependence upon classifications

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[6] Estimates of the number of children in this situation brought before juvenile courts range from 26% to some 48%; variation seems chiefly a product both of the inadequacy of records and of the difficulty of catagorizing precisely the conduct with which juveniles are charged. See generally Sheridan, Juveniles Who Commit Noncriminal Acts, 31 Fed. Probation 26, 27. By any standard, the number of juveniles involved is "considerable." *Ibid.*

[7] *Id.,* at 28–30.

which may often prove to be illusory. Further, the provision of notice, counsel, and a record would permit orderly efforts to determine later whether more satisfactory classifications can be devised, and if they can, whether additional procedural requirements are necessary for them under the Fourteenth Amendment.

Second, it should not be forgotten that juvenile crime and juvenile courts are both now under earnest study throughout the country. I very much fear that this Court, by imposing these rigid procedural requirements, may inadvertently have served to discourage these efforts to find more satisfactory solutions for the problems of juvenile crime, and may thus now hamper enlightened development of the systems of juvenile courts. It is appropriate to recall that the Fourteenth Amendment does not compel the law to remain passive in the midst of change; to demand otherwise denies "every quality of the law but its age." *Hurtado* v. *California*, 110 U. S. 516, 529.

III.

Finally, I turn to assess the validity of this juvenile court proceeding under the criteria discussed in this opinion. Measured by them, the judgment below must, in my opinion, fall. Gerald Gault and his parents were not provided adequate notice of the terms and purposes of the proceedings in which he was adjudged delinquent; they were not advised of their rights to be represented by counsel; and no record in any form was maintained of the proceedings. It follows, for the reasons given in this opinion, that Gerald Gault was deprived of his liberty without due process of law, and I therefore concur in the judgment of the Court.

SUPREME COURT OF THE UNITED STATES

No. 116.—October Term, 1966.

In the Matter of the Application of Paul L. Gault and Marjorie Gault, Father and Mother of Gerald Francis Gault, a Minor, Appellants.	On Appeal From the Supreme Court of Arizona.

[May 15, 1967.]

Mr. Justice Stewart, dissenting.

The Court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the Nation restrictions that the Constitution made applicable to adversary criminal trials.[1] I believe the Court's decision is wholly unsound as a matter of constitutional law, and sadly unwise as a matter of judicial policy.

Juvenile proceedings are not criminal trials. They are not civil trials. They are simply not adversary proceedings. Whether treating with a delinquent child, a neglected child, a defective child, or a dependent child, a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of the one is correction of a condition. The object of the other is conviction and punishment for a criminal act.

In the last 70 years many dedicated men and women have devoted their professional lives to the enlightened

[1] I find it strange that a Court so intent upon fastening an absolute right to counsel upon nonadversary juvenile proceedings has not been willing even to consider whether the Constitution requires a lawyer's help in a criminal prosecution upon a misdemeanor charge. See *Winters* v. *Beck*, 385 U. S. 907; *DeJoseph* v. *Connecticut*, 385 U. S. 982.

task of bringing us out of the dark world of Charles Dickens in meeting our responsibilities to the child in our society. The result has been the creation in this century of a system of juvenile and family courts in each of the 50 States. There can be no denying that in many areas the performance of these agencies has fallen disappointingly short of the hopes and dreams of the courageous pioneers who first conceived them. For a variety of reasons, the reality has sometimes not even approached the ideal, and much remains to be accomplished in the administration of public juvenile and family agencies—in personnel, in planning, in financing, perhaps in the formulation of wholly new approaches.

I possess neither the specialized experience nor the expert knowledge to predict with any certainty where may lie the brightest hope for progress in dealing with the serious problems of juvenile delinquency. But I am certain that the answer does not lie in the Court's opinion in this case, which serves to convert a juvenile proceeding into a criminal prosecution.

The inflexible restrictions that the Constitution so wisely made applicable to adversary criminal trials have no inevitable place in the proceedings of those public social agencies known as juvenile or family courts. And to impose the Court's long catalog of requirements upon juvenile proceedings in every area of the country is to invite a long step backwards into the Nineteenth Century. In that era there were no juvenile proceedings, and a child was tried in a conventional criminal court with all the trappings of a conventional criminal trial. So it was that a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced

to death by hanging. The sentence was executed. It was all very constitutional.[2]

A state in all its dealings must, of course, accord every person due process of law. And due process may require that some of the same restrictions which the Constitution has placed upon criminal trials must be imposed upon juvenile proceedings. For example, I suppose that all would agree that a brutally coerced confession could not constitutionally be considered in a juvenile court hearing. But it surely does not follow that the testimonial privilege against self-incrimination is applicable in all juvenile proceedings.[3] Similarly, due process clearly requires timely notice of the purpose and scope of any

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[2] *State* v. *Guild*, 5 Halst. 163, 18 Am. Dec. 404 (N. J. Sup. Ct.). "Thus, also, in very modern times, a boy of ten years old was convicted on his own confession of murdering his bed-fellow, there appearing in his whole behavior plain tokens of a mischievous discretion; and as the sparing of this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment." 4 Blackstone, Commentaries 23 (Wendell ed. 1847).

[3] Until June 13, 1966, it was clear that the Fourteenth Amendment's ban upon the use of a coerced confession is constitutionally quite a different thing from the Fifth Amendment's testimonial privilege against self-incrimination. See, for example, the Court's unanimous opinion in *Brown* v. *Mississippi*, 297 U. S. 278, at 285–286, written by Chief Justice Hughes and joined by such distinguished members of this Court as Mr. Justice Brandeis, Mr. Justice Stone, and Mr. Justice Cardozo. See also *Tehan* v. *Shott*, 382 U. S. 406, decided January 19, 1966, where the Court emphasized the "contrast" between "the wrongful use of a coerced confession" and "the Fifth Amendment's privilege against self-incrimination." 382 U. S., at 416. The complete confusion of these separate constitutional doctrines in Part V of the Court's opinion today stems, no doubt, from *Miranda* v. *Arizona*, 384 U. S. 436, a decision which I continue to believe was constitutionally erroneous.

proceedings affecting the relationship of parent and child. *Armstrong* v. *Manzo*, 380 U. S. 545. But it certainly does not follow that notice of a juvenile hearing must be framed with all the technical niceties of a criminal indictment. See *Russell* v. *United States*, 369 U. S. 749.

In any event, there is no reason to deal with issues such as these in the present case. The Supreme Court of Arizona found that the parents of Gerald Gault "knew of their right to counsel, to subpoena and cross examine witnesses, of the right to confront the witnesses against Gerald and the possible consequences of a finding of delinquency." 99 Ariz. 181, 185, 407 P. 2d 760, 763. It further found that "Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home." 99 Ariz., at 193, 407 P. 2d, at 768. And, as MR. JUSTICE WHITE correctly points out, p. ——, *ante*, no issue of compulsory self-incrimination is presented by this case.

I would dismiss the appeal.